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UNITED STATES, APPELLANT,

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[redacted] ET AL.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 73

UNITED STATES, APPELLANT,

vs.

MISSISSIPPI, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

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[fol. 1] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION.

Civil Action No. 3312

UNITED STATES OF AMERICA, Plaintiff,

v.

STATE OF MISSISSIPPI; ROSS R. BARNETT, JOE T. PATTERSON, HEBER A. LADNER, AS MEMBERS OF THE MISSISSIPPI STATE BOARD OF ELECTION COMMISSIONERS; H. K. WHITTINGTON, CIRCUIT CLERK AND REGISTRAR OF AMITE COUNTY; MRS. PAULINE EASLEY, CIRCUIT CLERK AND REGISTRAR OF CLAIBORNE COUNTY; J. W. SMITH, CIRCUIT CLERK AND REGISTRAR OF COAHOMA COUNTY; MRS. MARTHA TURNER LAMB, CIRCUIT CLERK AND REGISTRAR OF LE FLORE COUNTY; T. E. WIGGINS, CIRCUIT CLERK AND REGISTRAR OF LOWNDES COUNTY; WENDELL R. HOLMES, CIRCUIT CLERK AND REGISTRAR OF PIKE COUNTY, Defendants.

Complaint—Filed August 28, 1962

The United States of America, plaintiff, alleges that:

First Claim

1. This Court has jurisdiction of this action under 42 U.S.C. 1971(d), 28 U.S.C. 1345, and 28 U.S.C. 2281.

[fol. 2] 2. The State of Mississippi is joined as a party defendant also pursuant to §601(b) of the Civil Rights Act of 1960.

3. Ross R. Barnett, Joe T. Patterson and Heber A. Ladner are members of the Mississippi State Board of Election Commissioners by virtue of their official positions as Governor, Attorney General and Secretary of State, respectively. The State Board of Election Commissioners is an agency of the defendant State of Mississippi. The offices of said defendants are in the state capitol, Jackson, Mississippi.

4. H. K. Whittington is the Circuit Clerk and Registrar

of Voters of Amite County. His office is in Liberty, Mississippi.

5. Mrs. Pauline Easley is the Circuit Clerk and Registrar of Voters of Claiborne County. Her office is in Port Gibson, Mississippi.

6. J. W. Smith is the Circuit Clerk and Registrar of Voters of Coahoma County. His office is in Clarksdale, Mississippi.

7. Mrs. Martha Turner Lamb is the Circuit Clark and Registrar of Voters of Le Flore County. Her office is in Greenwood, Mississippi.

8. T. E. Wiggins is the Circuit Clerk and Registrar of Voters of Lowndes County. His office is in Columbus, Mississippi.

9. Wendell R. Holmes is Circuit Clerk and Registrar of Voters of Pike County. His office is in Magnolia, Mississippi.

10. Registrars of voters in Mississippi, including the [fol. 3] defendant registrars are agents of the Mississippi State Board of Election Commissioners and of the State of Mississippi; they administer and enforce the Mississippi constitutional and statutory provisions which set out the requirements and procedures for the registration of voters.

11. All registrars of voters in the State of Mississippi since at least 1892 have been white citizens.

12. In the counties of the defendant registrars, the statistics on voting age population of Negro and white persons and the approximate voter registration of each race are as follows:

	White		Negro	
	Voting Age Population	Registration	Voting Age Population	Registration
Amite	4449	3295	2560	1
Coahoma	8708	8376	14604	1371
Claiborne	1688	1440	3969	138
Lowndes	16460	5869	8362	63
Le Flore	10274	9803	13567	258
Pike	12163	9989	6936	124

13. The right to vote is essential to a republican form of government. It is secured by §§2 and 4 of Article I of the Constitution of the United States and by the Fourteenth, Fifteenth, and Seventeenth Amendments thereto.

14. Under the Constitution and laws of Mississippi prior to 1890, all male citizens, except insane persons and persons

convicted of disqualifying crimes, who were 21 years of age [fol. 4] or over and who had lived in the State six months and in the county one month were qualified electors, and were entitled to register to vote.

15. At the time of the adoption of the Mississippi Constitution of 1890 there were substantially more Negro citizens than white citizens who possessed these voter qualifications in Mississippi.

16. In 1890, a Mississippi Constitutional Convention adopted a new State Constitution. One of the chief purposes of the new constitution was to restrict the Negro franchise and to establish and perpetuate white political supremacy and racial segregation in Mississippi.

17. A principal section of the Mississippi Constitution of 1890 designed to accomplish this purpose was Section 244, which required a new registration of voters in Mississippi beginning January 1, 1892, and established as a new prerequisite to voting that a person otherwise qualified be able to read any section of the Mississippi Constitution, or understand the same when read to him, or give a reasonable interpretation thereof.

18. Since at least 1892, registration has been and is a prerequisite to voting in any election in Mississippi. Registration in Mississippi is permanent.

19. Since the adoption of the Mississippi Constitution of 1890 the State of Mississippi by law, practice, custom, and usage has maintained and promoted white political supremacy and a racially segregated society.

[fol. 5] 20. By 1899, approximately 122,000 or 82% of the white males of voting age and 18,000 or 9% of the Negro males of voting age were registered to vote in Mississippi. Since 1899, a substantial majority of white persons reaching voting age in Mississippi have become registered voters. The percentage of Negroes registered to vote has declined.

21. During the period from 1899 to approximately 1952, white political supremacy in Mississippi was maintained and promoted by the following methods among others:

(a) Negroes were not allowed to register to vote.

(b) Literate Negroes were required to interpret sections of the Mississippi Constitution.

(c) Negroes were excluded from Democratic primary elections. During this time, victory in the Demo-

cratic primary in Mississippi was tantamount to election.

22. In June 1951, a decision by the United States Court of Appeals for the Fifth Circuit emphasized the either-or elements of Section 244 of the Mississippi Constitution of 1890, *i.e.*, that a person could register to vote in Mississippi if he could read *or*, if unable to read, understand or interpret a provision of the Constitution.

23. By 1951, a much higher percentage of the Negroes of voting age in Mississippi were literate than in 1890.

[fol. 6] 24. In 1952 the Mississippi Legislature passed a joint resolution proposing an amendment to Section 244 of the Mississippi Constitution of 1890 which provided that as a prerequisite for registration to vote the applicant must be able both to *and* give a reasonable interpretation of any section of the Mississippi Constitution. The proposed amendment was submitted to the voters in a general election. Failure by the voters to mark the amendment portion of the ballot was counted as a vote against the proposed amendment, and it was not adopted.

25. The Legislature of Mississippi did not meet in 1953. On April 22, 1954, during its regular session, the Legislature passed another resolution to amend Section 244 of the Mississippi Constitution of 1890 to provide as prerequisites to qualification as an elector in Mississippi that a person be able to read and write any section of the Mississippi Constitution *and* give a reasonable interpretation thereof to the county registrar and in addition that a person be able to demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government. The proposed amendment also required persons applying for registration to make a sworn written application for registration on a form to be prescribed by the State Board of Election Commissioner. Persons who were registered to vote prior to January 1, 1954, were expressly exempted from the new and more stringent requirements.

[fol. 7] 26. In 1954, at least 450,000 or 63 percent of the white persons of voting age in Mississippi were registered to vote. In 1954 approximately 22,000 or five percent, of

the Negroes of voting age in Mississippi were registered to vote.

27. The proposed amendment to Section 244 of the Mississippi Constitution of 1890 was designed to perpetuate in Mississippi white political supremacy, a racially segregated society, and the disfranchisement of Negroes.

28. Six days after the adoption of the resolution proposing the constitutional amendment as described in paragraph 25, the Mississippi legislature, in anticipation of the United States Supreme Court decision on racial segregation in the public schools, created a 25-member Legal Educational Advisory Committee. The Committee's duty was to seek means to maintain racial segregation in the public schools in the event that the Supreme Court held such segregation to be unlawful.

29. In 1954, after the Supreme Court had declared state operation of racially segregated schools unconstitutional, white citizens councils were formed in Mississippi. The purpose of these organizations was the maintenance of racial segregation and white supremacy in Mississippi. The first statewide project undertaken by these organizations was the attempt to induce the white voters of Mississippi to adopt the prposed amendment to Section 244 of the [fol. 8] Mississippi Constitution of 1890.

30. In September 1954 an extraordinary session of the Mississippi Legislature was called to consider the recommendation of the Mississippi Legal Educational Advisory Committee that the Mississippi Constitution be amended to empower the legislature to abolish the public schools. The Legislature passed a resolution proposing such an amendment.

31. On November 2, 1954, the proposed amendment to Section 244 of the Mississippi Constitution of 1890 was submitted to and adopted by the voters. Of the approximately 472,000 registered voters in Mississippi who were eligible to vote on this proposed amendment about ninety-five percent were white; fewer than five percent were Negro. The amendment was adopted in a state where the public education facilities were and are racially segregated, and where such facilities provided for Negroes were and are inferior to those provided for white persons.

32. On December 21, 1954, the proposed amendment to the Mississippi Constitution authorizing the legislature to abolish the public schools was submitted to, and approved by, the voters.

33. In January 1955, another extraordinary session of the Mississippi Legislature was called for the purpose of inserting in the Constitution the amendment to Section 244 and the amendment to authorize abolition of the public schools. Both amendments were inserted during this session.

[fol. 9] 34. During the extraordinary session described in paragraph 33, the Mississippi Legislature adopted legislation implementing the amended Section 244. In addition to requiring the interpretation test an dthe duties and obligations test as a voter qualification and exempting therefrom persons registered prior to January 1, 1954, the State Board of Election Commissioners was directed to prepare a sworn written application form (which included the interpretation test and the duties and obligations test) and which county registrars were to be required to use in examining the qualifications of each applicant. The application forms were to maintained as permanent public records.

35. The effect of the amendment to Section 244 is to place the burden of more stringent requirements for registration on Negro citizens of voting age in Mississippi, the great majority of whom were not registered to vote. The white citizens of voting age, the great majority of whom were registered to vote, were not subjected to these requirements.

36. Since 1955 the defendant registrars as well as many other registrars in Mississippi have enforced the requirements of Section 244, as amended, when Negroes have attempted to register to vote, by requiring Negroes to interpret sections of the Mississipp Constitution and to demonstrate their understanding of the duties and obligations of citizenship on the form prescribed by the State Board of Election Commissioners.

37. In 1960 approximately 500,000 or 67 percent [fol. 10] of the white persons of voting age in Mississippi, and approximately 20,000 to 25,000, or 5 percent of the Negroes of voting age were registered to vote.

38. Section 244 of the Mississippi Constitution of 1890, as

amended, and its implementing legislation vest unlimited discretion in the county registrars of Mississippi to determine the qualifications of applicants for registration to vote. These constitutional and statutory provisions impose no standards upon registrars for the administration of the constitutional interpretation test and the duties and obligations test. They enable and require the registrars of voters in Mississippi to determine without reference to any objective criteria:

(a) The manner in which these tests are to be administered;

(b) The length and complexity of the sections of the Constitution to be read, written and interpreted by the applicants;

(c) The standard for a reasonable interpretation of any section of the Mississippi Constitution, and a reasonable understanding of the duties and obligations of citizenship;

(d) Whether the performance by the applicant in taking these tests is satisfactory.

39. The Mississippi Constitution contains 285 sections. These sections vary in subject matter and complexity—ranging from such matters as the prohibition against imprisonment for debt to the legislative power to provide for [fol. 11] ground rental or gross sum leases of the sixteenth section lands in the State.

40. There is no rational or reasonable basis for requiring, as a prerequisite to voting, that a prospective elector, otherwise qualified, be able to interpret certain of the sections of the Mississippi Constitution.

41. The defendant registrars of voters, vested with the discretion described in paragraph 38, have used, are using, and will continue to use the interpretation test and the duties and obligations test to deprive otherwise qualified Negro citizens of the right to register to vote without distinction of race or color. The existence of the interpretation test and the duties and obligations test as voter qualifications in Mississippi, their enforcement, and the threat of their enforcement have deterred, are deterring and will continue to deter otherwise qualified Negroes in Mississippi from applying for registration to vote.

42. Section 244 of the Mississippi Constitution, as amended, is unconstitutional:

(a) Section 244 is vague and indefinite and provides no objective standards for the administration by the registrar of the interpretation test and the duties and obligations test.

(b) The adoption, enforcement and continued threat of enforcement of a more stringent registration requirement following a period of racial discrimination in the registration of voters—a period during which an overwhelming percentage of white [fol. 12] residents were permanently registered and thus forever exempted from this new stringent requirement and when an overwhelming percentage of Negro residents who possessed similar qualifications were illegally denied the right to register—makes the constitutional interpretation test and the duties and obligations test devices to perpetuate the discrimination which the Fifteenth Amendment was intended to eliminate.

(c) The history of Section 244, as amended, the setting of white political supremacy and racial segregation in which it was adopted and is enforced, the discretion which it vests in Mississippi registrars of voters, the lack of any reasonable connection between the interpretation test and a capacity to vote render it invalid on its face as a device of discrimination in the registration of voters in Mississippi.

(d) In a state where public education facilities are and have been racially segregated and where those provided for Negroes are and have been inferior to those provided for white persons, an interpretation or understanding test as a prerequisite to voting, which bears a direct relationship to the quality of public education afforded the applicant violates the Fifteenth Amendment.

(e) There is no reasonable basis or legitimate state interest in requiring as a prerequisite to voting [fol. 13] that applicants interpret certain sections of the Mississippi Constitution.

43. The defendants and their agents, unless restrained by order of this Court, will continue to enforce Section 244, as amended, and its implementing statutory provisions as qualifications for registration to vote.

Second Claim

44. Plaintiff realleges paragraphs 1 through 34, and 37 of this Complaint.

45. In 1960, the Mississippi Legislature passed a joint resolution to amend Article XII of the Constitution of 1890 to include a new section (241-A) which added the qualification of good moral character to the qualifications of an elector. On November 8, 1960, the proposed addition to Article XII of the Constitution was submitted to and adopted by the voters. Of the approximately 525,000 registered voters in Mississippi who were eligible to vote on this proposed amendment, about 95 percent were white; fewer than 5 percent were Negro. The amendment was adopted in a state where all state officials were white.

46. Section 241-A of the Mississippi Constitution as enacted provided that the Legislature shall have power to enforce the provisions of this Section by appropriate legislation. No legislative provision was made until 1962 for any procedures to be followed by the registrars in determining the moral character of applicants.

47. Commencing in August 1960, the United States un- [fol. 14] dertook steps throughout the State of Mississippi to obtain, inspect and photograph voter registration records of certain Mississippi counties pursuant to the authority granted to the Attorney General of the United States by Title III of the Civil Rights Act of 1960. Litigation resulted in certain of these counties commencing in January 1961. Such action was a matter of common knowledge throughout the State of Mississippi.

48. Commencing in July 1961, the United States undertook litigation against seven registrars in Mississippi for the purpose of obtaining injunctive relief to prevent the registrars from engaging in racially discriminatory acts and practices in the operation of their offices. This litigation is still pending and as of the date of filing this complaint, no permanent injunction has been issued against any regis-

trar in the State of Mississippi. On April 10, 1962, the Circuit Court of Appeals for the Fifth Circuit did issue an injunction pending appeal against the Circuit Clerk and Registrar of Forrest County, Mississippi, Theron C. Lynd, enjoining Theron C. Lynd and the State of Mississippi and all persons in concert with them from engaging in discriminatory acts and practices based on race in the registration for voting in Forrest County, and specifically from:

(a) Denying Negro applicants the right to make application for registration on the same basis as white applicants;

(b) Failing to process applications for registration submitted by Negro applicants on the same basis as applications submitted by white applicants;

[fol. 15] (c) Failing to register and to issue registration cards to Negro applicants on the same basis as white applicants;

(d) Denying Negro applicants the right to be registered by the same office personnel and with the same expedition and convenience as are being permitted to white applicants, and from failing or refusing to give to Negro applicants the same privileges as to reviewing their application forms at the time they are filled out and advising Negro applicants of such omissions as appear on their forms as they are now or theretofore have given to white applicants under similar circumstances;

(e) Administering the constitutional interpretation test to Negro applicants by including as sections to be read and interpreted any sections other than those which at the time of the trial had been used for submission to white applicants;

(f) Requiring rejected Negro applicants to wait any different period before reapplying for registration than may be authorized under the laws of Mississippi and other than is required of white applicants.

49. The suits by the United States against registrars and the action taken by the Court of Appeals were matters of common knowledge throughout the State of Mississippi. [fol. 16] The Legislature of Mississippi was in regular ses-

sion during April and May, 1962. During May the Mississippi Legislature adopted legislation implementing Section 241-A of the Constitution. Section 3235 of the Mississippi Code was amended to add the following:

> "Except that any person registering after the effective date of this Act shall be of good moral character as required by Section 241-A of the Mississippi Constitution."

At the same time, the Mississippi Legislature amended Section 3209.6 of the Mississippi Code to require that the defendant State Board of Election Commissioners in preparing the application forms to be used by the county registrars should include therein spaces for information showing the good moral character of the applicant in order that the applicant may demonstrate to the county registrar that he is a person of good moral character. In addition, the Mississippi Legislature enacted two new laws, one requiring publication of the names and addresses of all applicants who apply for registration to vote (H.B. 882, Reg. Sess. 1962) and the second providing a procedure by which qualified electors, by affidavit, could challenge the good moral character of any applicant for registration and for a hearing on any such challenge and for an appeal therefrom (H.B. 904, Reg. Sess. 1962), both hereinafter more fully described and challenged as invalid in plaintiff's Fourth Claim in this Complaint.

50. The purpose and the effect of the good moral character requirement were and are:

(a) To subject the vast majority of Negro citizens of voting age in Mississippi to this additional require- [fol. 17] ment when they attempt to become registered voters; and to exempt the majority of the white citizens of voting age in Mississippi from this requirement since they are already registered voters.

(b) To provide an additional device with which registrars could discriminate against Negro citizens who seek to register to vote—a means of discrimination which would make detection more difficult.

51. Section 241-A of the Mississippi Constitution of 1890, as amended, vests unlimited discretion in the registrars of voters to determine the good moral character of applicants for registration. This new requirement is vague and indefinite and neither suggests nor imposes standards for the registrar's use in determing good moral character. It enables and requires the registrars of voters in Mississippi to determine without reference to any objective criteria:

(a) What acts, practices, habits, customs, beliefs, relationships, moral standards, ideas, associations, attitudes and demeanor evidence bad moral character and what weight should be given to each.

(b) What is evidence of good moral character and what weight should be given to affirmative evidence of it, such as school record, church membership, military service, club memberships, personal, social and family relationships, civic interest, absence of criminal record.

[fol. 18] (c) What periods of the applicant's life are to be examined for evidence relating to his character—whether the applicant's conduct during a remote period of his life is to be considered.

(d) What sources, if any, such as public records, public officials, private individuals—Negro and white—will be consulted in determining the character of of the applicant; or whether the determination will be made on the basis of personal knowledge, impression, newspaper accounts, rumor or otherwise.

52. The existence of the character qualification in Mississippi, its enforcement, and the threat of its enforcement, in the absence of any objective criteria which apply to all voters, have deterred, are deterring, and will continue to deter qualified Negro citizens in Mississippi from applying to register to vote. The threatened use and the use by the defendant registrars of voters of the character requirement deprive and will deprive otherwise qualified Negro citizens of the right to register to vote without distinction of race or color.

53. Section 241-A of the Mississippi Constitution is unconstitutional:

(a) It exempts most of the white persons of voting age from, and subjects most of the Negroes of voting age to, the requirement of good moral character.

(b) The legislative history of the character require- [fol. 19] ment, the setting of white political supremacy and racial segregation in which it was adopted and is enforced, the discretion which it vests in the registrars of voters and the lack of any reasonable, definite and objective standards by which good moral character is to be determined render it invalid as a device which facilitates and perpetuates racial discrimination in the registration of voters in Mississippi.

54. The defendants and their agents, unless restrained by order of this Court, will continue to enforce Section 241-A and its implementing statutory provision as a qualification for registration to vote.

Third Claim

55. Plaintiff realleges paragraphs 1 through 34, 37, and 45 through 49 of this Complaint.

56. In 1955, the Mississippi Legislature passed a statute requiring the defendant State Board of Election Commissioners to prepare a series of registration application forms suitable for obtaining pertinent information with respect to the applicant's qualifications, including spaces to test the applicant's ability to read and write any section of the Constitution of the State of Mississippi and give a reasonable interpretation thereof, and a space for the applicant to demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government. (Sec. 3209.6 Miss. Code.) This section also provided that application forms shall be numbered serially in the order of taking [fol. 20] and a permanent record be made of the date each application was filed, the name of the applicant, and serial number; all such applications were required to be main-

tained as a permanent public record. The Legislature further required that the registrars administer the oath provided by the Mississippi Constitution.

57. In 1957, the Congress of the United States enacted the Civil Rights Act of 1957 which authorized the Attorney General of the United States to bring civil actions to protect the right to vote without distinction of race or color.

58. During the winter and spring of 1960, the Congress of the United States debated the question of whether additional legislation was necessary to protect the right of all citizens to register to vote at all elections without distinction of race or color. Included in the legislation considered at that time, and ultimately passed, was Title III of the 1960 Civil Rights Act which requires that all records and papers relating to registration, the payment of poll taxes, or other acts requisite to voting in federal elections be retained and preserved for a specified period and that they be made available to the Attorney General for inspection and copying. This provision was enacted into law in May of 1960. During the consideration by Congress of the proposed Title III, the Mississippi Legislature was in session. During that session the Mississippi Legislature passed a concurrent resolution (H.C.R. 36, Reg. Sess. 1960) commending the fight against the "vicious so-called Civil Rights Bills." Shortly thereafter, the Mississippi [fol. 21] Legislature amended Section 3209.6 Mississippi Code, which formerly provided that the application forms remain a permanent public record, to provide, if no appeal from the registrar's decision was taken during the statutory thirty-day appeal period, that the registrars were not required to retain or preserve any record made in connection with the application of anyone to register to vote.

59. The purpose and effect of the Mississippi statute described in the preceding paragraph (Section 3209.6, as amended, which authorizes county registrars to destroy registration records) was to frustrate federal protection in Mississippi of the right of citizens to vote without distinction of race, and to facilitate discrimination by county registrars against Negroes seeking to register to vote. Some registration application forms, including some forms received by defendant H. K. Whittington in Amite County, Mississippi, have been destroyed under the authority of

this statute. This statute violates Article VI of the Constitution of the United States in that the statute is in direct conflict with and contrary to the requirements of Title III of the Civil Rights Act of 1960.

60. The defendants and their agents, unless restrained by order of this Court will continue to destroy voter registration records in violation of the Constitution of the United States and the Civil Rights Act of 1960.

[fol. 22] Fourth Claim

61. Plaintiff realleges paragraphs 1 through 34, 37, 45 through 49, and 56 through 58 of this Complaint.

62. In late 1961 and early 1962, Negro citizens and organizations conducted a voter registration drive in Mississippi for the purpose of increasing the number of Negroes eligible to vote in the 1962 Mississippi primary elections. For the first time in many years Negroes were candidates for the office of representative in the Congress of the United States. These facts were widely publicized and were matters of common knowledge throughout Mississippi.

63. Commencing in July 1961, the United States initiated litigation against seven registrars of Mississippi for the purpose of obtaining injunctive relief against the registrars prohibiting racially discriminatory acts and practices in the operation of their offices. The first hearing in one of the cases referred to above involving a motion for an injunction came on to be heard before the United States District Court for the Northern District of Mississippi in December 1961 in a case against the registrar and sheriff of Tallahatchie County. During the course of this hearing the United States attempted to subpoena the poll books in the county as those books, by law, contain the race of all qualified voters. At that time the United States explained to the Court and counsel for the defendant State of Mississippi the difficult problem of establishing race identification of the thousands of persons on the registration rolls in any particular county.

[fol. 23] 64. In March 1962, a second hearing was held in the United States District Court for the Southern District of Mississippi on a motion for a preliminary injunction in an action by the United States against the registrar of voters of Forrest County. At the hearing, the United

States was permitted to inspect the registration application forms of thirteen Negroes and six white persons who had applied to be registered. Some of the Negro applicants were highly educated and their forms give every indication that they were qualified to vote. However, on some of these forms there were certain formal, technical and inconsequential errors, such as the omission of the applicant's precinct in the oath recitation, the failure to sign the oath, or the failure to sign the application at a line below the minister's oath on page 3, although the applicant had subscribed and sworn to the application on another line clearly designated as the signature line. The testimony in this case indicated that white applicants for registration were either not required to fill out an application form or were assisted by the registrar, or his agents, in filling out the form with respect to his precinct and where the applicant was to sign his name on the form.

65. On April 10, 1962, as is more fully detailed in paragraph 48 of this Complaint, the United States Court of Appeals for the Fifth Circuit granted an injunction pending appeal enjoining the registrar of voters of Forrest County, Mississippi, and the State of Mississippi from [fol. 24] failing or refusing to give to Negro applicants the same privileges as to reviewing their application forms at the time they are filled out and advising Negro applicants of such omissions as appear on their forms as they are now or heretofore have given to white applicants under similar circumstances. This decision of the Circuit Court of Appeals and the terms of its injunction were widely publicized and were matters of common knowledge throughout Mississippi.

66. The Legislature in Mississippi was in regular session during April and May 1962. During May, the Mississippi Legislature adopted a package of legislation affecting the registration of voters, the purpose and effect of which is to deter, hinder, prevent, delay and harass Negroes and to make it more difficult for Negroes in their efforts to become registered voters, to facilitate discrimination against Negroes, and to make it more difficult for the United States to protect the right of all its citizens to vote without distinction of race or color. This legislative package of bills included the following:

(a) House Bill 900, amended Section 3213 of the Mississippi Code:

Prior to the amendment, that statute required that an applicant fill out the application form without assistance or suggestion from any person. The amendment added that the requirements of the statute were mandatory; that no application shall be approved or the applicant registered un- [fol. 25] less all blanks on the application form are "properly and responsively" filled out by the applicant and that both the oath as such and the application form must be signed separately by the applicant.

(b) House Bill 901:

Section 3232 was amended so as to eliminate the designation of race in the county poll books.

(c) House Bill 905:

This statute amended Section 3209.6 to require the defendant State Board of Election Commissioners to make provision on the application form for the applicant to demonstrate good moral character and for the registrar to use the good moral character requirement in registering voters. This statute also retained the provision heretofore described in paragraph 58 permitting destruction of the application form.

(d) House Bill 822 and House Bill 904:

These statutes require that within 10 days of receipt of an application for registration the registrar must publish once each week for two consecutive weeks in a newspaper having general circulation in the county where the applicant applies, the name and address of each applicant who applies for registration. These statutes further provide that within 14 days after the date of the last publication of the name of the applicant, any [fol. 26] qualified elector in the county may challenge both the good moral character of any applicant and any other qualification of any applicant

to vote. Within 7 days after such affidavit of challenge is filed the registrar notifies the applicant of the time and place for a hearing to determine the sufficiency of the affidavit of challenge. The date of the hearing may be changed by the registrar. At the hearing the registrar is authorized to issue subpoenas to compel the attendance and testimony of witnesses whose testimony is transcribed and the registrar may decide the sufficiency of the affidavit of challenge or "may take the matter under advisement just as a court may do." Strict rules of evidence shall not be enforced at the hearing and witnesses may be examined by the applicant and his attorneys or by the challenger and his attorneys. Costs are taxed at such proceedings in the same manner as costs are taxed in the State chancery courts. Appeal is provided to the county board of election commissioners by the person against whom the registrar decided. In the event no challenge is filed, the good moral character of the applicant and any other required prerequisite for registration are "within a reasonable time" to be determined by the registrar.

(e) House Bill 903:

This statute provides that if a registrar [fol. 27] determines an applicant is qualified he shall endorse the word "passed" on the application form but the applicant is registered only upon his subsequent request made in person to the registrar. Under this statute, it is the applicant's responsibility to return to the registrar's office to determine whether he has passed or failed. This statute also provides that if the applicant is of good moral character, but he has not otherwise complied with the registration requirements, the registrar endorses on the application the word "failed" without specifying the reasons therefor "as so to do may constitute assistance to the applicant on another application." If the applicant is otherwise qualified, but not of good moral character, it is so endorsed on the application form and

the registrar shall state the reasons why he finds the applicant not to be of good moral character. If the applicant is not otherwise qualified and fails to demonstrate his good moral character, the registrar endorses on the application the word "failed" and may in his discretion also endorse the words "not of good moral character."

67. This package of legislation is unconstitutional:

(a) House Bills 900 and 903:

(1) These statutes facilitate deprivation of the right to vote on account of race or color by estab- [fol. 28] lishing as grounds for disqualification any formal, technical, or inconsequential error or omission by the applicant on the application form.

(2) The purpose and the inevitable effect of these statutes, because they apply prospectively, are to exempt the majority of the white persons of voting age who are presently registered from these onerous requirements and to subject Negroes, few of whom are presently registered, to these requirements.

(3) The application form is converted into a hypertechnical and unreasonable examination. This use of the application form as a hypertechnical examination is an arbitrary and unreasonable restriction on the exercise of the right to vote and it bears no reasonable relationship to any legitimate state interest.

(4) These statutes vest unlimited discretion in the registrars to determine without reference to any objective standard whether an application form is filled out "properly and responsively." There are no standards imposed on the registrars for determining which questions on the form elicit the "essential facts and qualifications to entitle a person to register to vote."

(5) The requirement that the oath and signature on the application form be signed without assist-

[fol. 29] ance or suggestion is arbitrary and unreasonable and is a device to trap applicants into an omission which will serve as grounds for disqualification.

(6) The prohibition against informing applicants or allowing applicants to learn of the reason or reasons for their disqualification as voters is wholly unreasonable and arbitrary and is contrary to any legitimate state interest and is inconsistent with fundamental principles of democracy.

(b) House Bills 822 and 904.

(1) These statutes which provide for publication of the names of applicants and the challenging of an applicant's qualifications for any reason by any qualified elector vest power and authority in white citizens who are the qualified electors in Mississippi, to harass Negroes, and to delay the registration of Negroes. No objective standard is provided to limit the grounds upon which such citizens may challenge the qualifications of applicants for registration.

(2) These statutes impose onerous, arbitrary and unreasonable procedures on prospective electors who are challenged by requiring them to appear and possibly assume the cost of an administrative hearing before their qualifications to vote are determined.

[fol. 30] (3) These statutes provide no objective standards whereby registrars may determine qualifications of prospective registrants who have been challenged.

(4) These statutes, being prospective, exempt white persons, a large majority of whom are presently registered to vote, and impose on virtually all of the Negro citizens of voting age in Mississippi, onerous procedural requirements as prerequisites to registration.

(5) These statutes vest the registrars of voters with unlimited power to forestall the registration

of qualified Negro citizens by taking the matter under advisement.

(6) These statutes are arbitrary and unreasonable requirements on prospective electors and bear no reasonable relationship to any legitimate state interest.

(7) The purpose and effect of these statutes are to give the white community of Mississippi the legal right to pass initially upon the qualifications and character of Negro citizens who seek to become registered voters and to give the members of the white community the opportunity to harass and intimidate Negro applicants for registration whose names are publicized by operation of the statutes.

68. The history of racial discrimination in Mississippi, the legislative setting in which the statutes described in [fol. 31] paragraph 66 were enacted, the lack of any reasonable or objective standards for the registration of voters, and the arbitrary character of these requirements which bear no reasonable relationship to any legitimate state interest render them invalid and in violation of 42 U.S.C. 1971, Article I of the Constitution of the United States and the Fourteenth and Fifteenth Amendments thereto.

69. Mississippi registrars of voters are required to apply these new and onerous requirements. The defendant registrars have applied such requirements. The existence of these onerous requirements, their enforcement and the threat of their enforcement have deterred, are deterring and will continue to deter otherwise qualified Negroes in Mississippi from applying to register to vote.

70. The defendants and their agents, unless restrained by order of this Court, will continue to enforce and threaten to enforce the new registration requirements as described in paragraph 66, the effect of which has been and is to deprive otherwise qualified Negro citizens in Mississippi of their right to register to vote without distinction of race or color.

Wherefore, plaintiff prays that pursuant to the provisions of 28 U.S.C. 2281, a District Court of three judges be

convened in accordance with the procedures set forth in 28 U.S.C. 2284, and that said Court:

1. Adjudge, declare and decree that the provisions of Section 244 of the Constitution of Mississippi, as amended, and the statutes implementing said Section 244, as amend-
[fol. 32] ed, are invalid and in violation of 42 U.S.C. 1971, Article I of the Constitution of the United States and the Fourteenth and Fifteenth Amendments thereto;

2. Adjudge, declare and decree that the provisions of Section 241-A of the Constitution of Mississippi and its implementing statutes providing for a character test as a prerequisite to registering to vote are invalid and in violation of 42 U.S.C. 1971, Article I of the Constitution of the United States and the Fourteenth and Fifteenth Amendments thereto;

3. Adjudge, declare and decree that the following Mississippi statutes are invalid and in violation of 42 U.S.C. 1971, Article I of the Constitution of the United States and the Fourteenth and Fifteenth Amendments thereto:

(a) H.B. 900
(b) H.B. 903
(c) H.B. 822
(d) H.B. 904

4. Adjudge, declare, and decree that Section 3209.6 of the Mississippi Code as amended, providing for the destruction of application forms is invalid as being in conflict with Title III, Civil Rights Act of 1960, and in violation of Article VI of the Constitution of the United States.

5. Make a finding that the defendant county registrars have deprived Negro citizens of the right secured by 42 U.S.C. 1971(a); and that such deprivations have been and are pursuant to a pattern and practice of racial discrimination.

[fol. 33] 6. Issue a preliminary and permanent injunction enjoining the defendants, their agents, employees and successors, and all persons in active concert or participation with them from:

(a) Enforcing and giving any further effect to any of the Constitutional and statutory provisions de-

scribed in paragraphs 1 through 4 of the prayer of this Complaint;

(b) Engaging in any act which would deprive any citizen in the State of Mississippi of the right to register and the right to vote without distinction of race or color;

(c) Engaging in any acts which would delay, prevent, hinder, discourage, or harass Negro citizens, on account of their race or color, from applying for registration and becoming registered voters in the State of Mississippi;

(d) Using the application form as an examination or test for Negro applicants, and to use such application form only as such form has been used in registering white applicants;

(e) Using any interpretation or understanding test which bears a direct relationship to the quality of public education afforded Negro applicants.

7. Order said defendants to register as a voter any Negro applicant for registration who possesses the following qualifications for registering to vote and none of the disqualifications as set forth in the Mississippi Constitution [fols. 34-35] of 1890:

(a) He is a citizen not less than 21 years of age;

(b) He has been a resident of the state, county and election district for the period prescribed by Mississippi law;

(c) He is able to read;

(d) He has not been convicted of any disqualifying crimes enumerated in the Constitution and laws of Mississippi and is not insane.

8. Grant such additional relief as justice may require, together with the costs and disbursements of this action.

/s/ Robert F. Kennedy, Attorney General. /s/ Burke Marshall, Assistant Attorney General. /s/ Robert Hauberg, United States Attorney. /s/ John Doar, Attorney, Department of Justice.

[fol. 36] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3312

[Title omitted]

MOTION OF DEFENDANTS FOR ENLARGEMENT OF TIME TO PLEAD—Filed September 6, 1962

Come the defendants and each of them by their attorney and move the Court to enlarge the time within which they are required to plead to the complaint in this cause, and in support of this motion would respectfully show unto the Court the following:

That the complaint filed herein consists of thirty-four pages and seventy separate allegations; that the complaint seeks to have this Court declare unconstitutional two sections of the Mississippi Constitution and five statutes of the [fol. 37] State of Mississippi; that to properly and adequately prepare a defense to the complaint will require exhaustive legal research and an abundance of factual data.

The attorney which has been assigned to prepare the pleadings and the defense of this suit is presently engaged in the handling of numerous cases now pending in this and other courts; that his presence is required before a panel of the Circuit Court of Appeals of the Fifth Circuit in the case of United States versus Theron Lynd for the entire week beginning September 17, and it will be physically impossible for him to properly plead and prepare to defend this suit within the statutory time required by the Federal Rules of Civil Procedure.

Attorney for defendants, in order to properly plead to this complaint needs at least an additional time of thirty days, and defendants believe that under the circumstances such enlargement should be granted.

/s/ Will S. Wells, Assistant Attorney General, State of Mississippi, Attorney for Defendants.

[fols. 38-40] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3312

[Title omitted]

DESIGNATION OF THREE-JUDGE COURT—Filed September 6, 1962

The Honorable William H. Cox, United States District Judge for the Southern District of Mississippi, to whom an application for injunction and other relief has been presented in the above-styled and numbered cause, having notified me that the action is one required by act of Congress to be heard and determined by a district court of three judges, I, Elbert P. Tuttle, Chief Judge of the Fifth Circuit, hereby designate the Honorable John R. Brown, United States Circuit Judge and the Honorable John Minor Wisdom, United States Circuit Judge, to serve with Judge Cox as members of, and with him to constitute the said court to hear and determine the action.

Witness my hand this 5th day of September, 1962.

/s/ Elbert P. Tuttle, Chief Judge, Fifth Circuit.

[fol. 41] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3312

[Title omitted]

ORDER ENLARGING TIME TO PLEAD—September 12, 1962

On motion of the defendants in the above styled and numbered cause and for good cause shown, it is ordered that the defendants be and they are hereby granted thirty days

additional time or until October 19, 1962, within which to plead to the complaint in this cause.

Ordered this 12th day of September, 1962.

Harold Cox, United States District Judge.

{fol. 42} [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3312

[Title omitted]

ORDER ENLARGING TIME TO PLEAD—October 5, 1962

On request of the defendants in this cause and for good cause shown, it is ordered that the defendants be and they are hereby granted thirty days additional time or until and including November 19, 1962 within which to plead to the complaint in this cause.

Ordered this the 5th day of October, 1962.

Harold Cox, United States District Judge.

[fol. 43] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3312

[Title omitted]

MOTION OF DEFENDANT W. R. HOLMES, FOR SEPARATE TRIAL OF ANY ALLEGATIONS WHICH MAY BE ALLEGED IN THE COMPLAINT OF ILLEGAL OR DISCRIMINATORY APPLICATION BY HIM OF THE CONSTITUTIONAL AND STATUTORY PROVISIONS OF THE STATE OF MISSISSIPPI—Filed November 17, 1962

If the motion of the defendant, W. R. Holmes, for severance is denied, then he moves in the alternative, that the court grant a separate trial of any and all allegations set

forth in the complaint, of discriminatory administration or application of the constitutional and statutory provisions of the State of Mississippi by this defendant, if any there be, and for grounds therefor says:

(1) This defendant has been joined as a party defendant [fol. 44] with five other county registrars, whose acts in the administration of the constitutional and statutory provisions of the State of Mississippi respecting voting have no connection, directly or indirectly, with any acts of this defendant as registrar in Pike County, and evidence of any alleged illegal or discriminatory application of the constitution and statutes of Mississippi respecting voting any one or more of the other defendant registrars, would not be admissible against, and would be highly prejudicial to, this defendant.

(2) Unless the separate trial of such issues, if any, requested by this motion is granted the trial of any issues that may be alleged in the complaint against this defendant will be unduly delayed and impeded, and the orderly proceedings of this court will be interrupted and interfered with.

Respectfully submitted on this, the 16th day of November, A.D., 1962.

/s/ B. D. Statham, One of The Attorneys for W. R. Holmes, One of The Defendants.

[fol: 45] Certificate of service omitted in printing.

[fol. 46] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3312

[Title omitted]

MOTION OF DEFENDANTS TO QUASH THE THREE-JUDGE COURT AS TO CERTAIN SPECIFIED MATTERS—Filed November 19, 1962.

The defendants move the Court to quash the three-judge court as to, or in the alternative to eliminate therefrom, all matters pertaining to the constitutionality of Section 244 of the Constitution of the State of Mississippi of 1890, before the same was amended, for the reason that said Section has been declared to be constitutional and not in conflict with the Constitution or laws of the United States, by [fol. 47] the Supreme Court of the United States in the case of *Williams* v. *Mississippi*, 42 L.Ed. 1012, which decision has never been overturned or modified and, therefore, is binding on this Court.

The defendants further move that this Court quash the three-judge court as to, or in the alternative to eliminate from this suit, the matter or claim as to the constitutionality of Section 244 of the Mississippi Constitution as amended in 1955 for the reason that said Section of the Constitution was declared to be constitutional and not in conflict with the Constitution or laws of the United States by a three-judge court of the Southern District of Mississippi in the case of *Darby* v. *Daniel*, 168 F. Supp. 170, which decision has never been overturned or modified and which should be followed by this Court.

Respectfully submitted this the 19th day of November, 1962.

T. F. Badon, Attorney at Law, Liberty, Mississippi. Joe D. Gordon, Attorney at Law, Liberty, Mississippi. Joe Drake, Attorney at Law, Port Gibson, Mississippi. Semmes Luckett, Attorney at Law, Clarksdale, Mississippi. Leon Porter, Attorney at Law, Clarksdale, Mississippi. Chester Curtis, At-

torney at Law, Clarksdale, Mississippi. Aubrey Bell, Attorney at Law, Greenwood, Mississippi. Hardy Lott, Attorney at Law, Greenwood, Mississippi. J. O. Sams, Jr., Attorney at Law, Columbus, Mississippi. William Burgin, Attorney at Law, Columbus, Mississippi. W. H. Jolly, Attorney at Law, Columbus, Mississippi. B. D. Statham, Attorney at Law, Magnolia, Mississippi. Joe T. Patterson, Attorney General for the State of Mississippi. Will S. Wells, Dugas Shands, Guy N. Rogers, and William A. Allain, Assistant Attorneys General for the State of Mississippi. Peter M. Stockett, Jr. and Darryl A. Hurt, Special Assistant Attorneys General for the State of Mississippi. By: /s/ Will S. Wells, Assistant Attorney General for the State of Mississippi, one of the Attorneys of Record for Defendants.

[fol. 48]

[fol. 49] Certificate of Service omitted in printing.

[fol. 50] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3312

[Title omitted]

MOTION OF DEFENDANTS TO STRIKE AND ALTERNATIVE MOTION FOR A MORE DEFINITE STATEMENT—Filed November 19, 1962.

Comes now the State of Mississippi, Ross R. Barnett, Joe T. Patterson, Heber A. Ladner, as members of the Mississippi State Board of Election Commissioners; H. K. Whittington, Circuit Clerk and Registrar of Amite County; Mrs. Pauline Easley, Circuit Clerk and Registrar of Claiborne County; J. W. Smith, Circuit Clerk and Registrar

of Coahoma County; Mrs. Martha Turner Lamb, Circuit [fol. 51] Clerk and Registrar of LeFlore County; T. E. Wiggins, Circuit Clerk and Registrar of Lowndes County; Wendell R. Holmes, Circuit Clerk and Registrar of Pike County, Mississippi, who are so named as Defendants in the Complaint, without waiving or intending to waive any right, privilege or immunity, or lack of jurisdiction of the person of any of said Defendants or the subject matter of this suit, but reserving all of same, without making any general appearance in this cause, and appearing specially for the purpose or purposes of these motions, jointly and severally move the Court as follows:

Motion No. 1

Motion to Strike

The Defendants in this cause move the Court to strike from the Complaint filed on behalf of the Plaintiff, United States of America, the hereinafter designated paragraphs, portions of paragraphs or allegations thereof on the ground that they constitute immaterial or impertinent, or immaterial and impertinent, matter in this cause as apparent from the fact of the Complaint and the statutes therein alleged to be the basis of the Complaint and for the further reason that no evidence based on the allegations contained in this Complaint, as specifically enumerated, would be admissible on a hearing or a trial of this cause.

(1) Paragraph 11 of the Complaint.
(2) Paragraph 12 of the Complaint.
(3) Paragraph 13 of the Complaint.
(4) Paragraph 14 of the Complaint.
(5) Paragraph 15 of the Complaint.

[fol. 52] (6) The second sentence of Paragraph 16 of the Complaint.

(7) Paragraph 17 of the Complaint.
(8) Paragraph 18 of the Complaint.
(9) Paragraph 19 of the Complaint.
(10) Paragraph 20 of the Complaint.
(11) Paragraph 21 of the Complaint.
(12) Paragraph 22 of the Complaint.
(13) Paragraph 23 of the Complaint.
(14) Paragraph 24 of the Complaint.

(15) Paragraph 25 of the Complaint.
(16) Paragraph 26 of the Complaint.
(17) Paragraph 27 of the Complaint.
(18) Paragraph 28 of the Complaint.
(19) Paragraph 29 of the Complaint.
(20) Paragraph 30 of the Complaint.
(21) Sentences 2 and 3 of Paragraph 31 of the Complaint.
(22) Paragraph 32 of the Complaint.
(23) Paragraph 33 of the Complaint.
(24) Paragraph 34 of the Complaint.
(25) Paragraph 35 of the Complaint.
(26) Paragraph 36 of the Complaint.
(27) Paragraph 37 of the Complaint.
(28) Paragraph 38 of the Complaint.
(29) Paragraph 39 of the Complaint.
(30) Paragraph 40 of the Complaint.
(31) Paragraph 41 of the Complaint.

[fol. 53] (32) Subsections (c) and (d) of Paragraph 42 of the Complaint.

(33) Paragraph 45 of the Complaint.
(34) Paragraph 47 of the Complaint.
(35) Paragraph 48 of the Complaint.
(36) Paragraph 49 of the Complaint.
(37) Paragraph 50 of the Complaint.
(38) Paragraph 52 of the Complaint.
(39) Paragraph 53 of the Complaint.
(40) The second sentence of Paragraph 56 of the Complaint.
(41) Paragraph 58 of the Complaint.
(42) Paragraph 59 of the Complaint.
(43) Paragraph 62 of the Complaint.
(44) Paragraph 63 of the Complaint.
(45) Paragraph 64 of the Complaint.
(46) The second sentence of Paragraph 66 of the Complaint, and subsections (a), (b), (c), (d), (e).
(47) Paragraph 67 of the Complaint.
(48) Paragraph 68 of the Complaint.
(49) Paragraph 69 of the Complaint.
(50) Paragraph 70 of the Complaint.

Motion No. 2

Motion for a More Definite Statement

As hereinafter more fully indicated in this motion for a more definite statement, this motion is made in the alternative to the extent that if the motion to strike is sus-
[fol. 54] tained as to the paragraphs, portions of paragraphs or allegations of the Complaint, to which the motion for a more definite statement is also addressed, then as to such paragraphs, portions of paragraphs or allegations the motion for a more definite statement should be disregarded because they will be ordered stricken.

The Defendants move this Court to require the Plaintiff, the United States of America, to file a more definite statement relative to the following designated portions of the Complaint because the same are so vague, broad, general, all-inclusive and—ambiguous that these Defendants cannot reasonably or properly be required to frame a responsive pleading or answer thereto, and for grounds thereof would show:

(1) This motion for a more definite statement is the only proceeding or the most appropriate method under the Federal Rules of Civil Procedure to properly and adequately require the Plaintiff to properly present to this Court and these Defendants the ultimate facts or issues and basis of claims and assertions which Plaintiff intimates or indicates against these Defendants and unless Plaintiff is required to make the more definite statements herein requested, these Defendants and the Court will be hindered and prejudiced and the proper disposition of this cause will be unduly delayed. This Defendant is advised and believes and thereupon says that Plaintiff can readily and promptly, without prejudice to this cause or Complaint, if any it has, render and make the more definite statements herein requested.

[fol. 55] (2) The portions of the Complaint as to which a more definite statement is hereby requested, the defects therein, which Defendants complain of, and the details desired are as hereinafter set out. This motion is not made for the sole purpose of delay, but so that justice may be done.

(3) This motion is made on the basis of assuming, for the moment, that Part IV of the Civil Rights Act of 1957 (71 Stat. 637) and Title VI of the Civil Rights Act of 1960 (74 Stat. 90), are valid and constitutional, but which validity and constitutionality these Defendants deny and do not waive by filing this motion for a more definite statement.

(4) As to Paragraph 21 of the Complaint, the Plaintiff alleges in said paragraph as follows:

> "21. During the period from 1899 to approximately 1952, white political supremacy in Mississippi was maintained and promoted by the following methods among others (a) negroes were not allowed to register to vote. (b) Literate negroes were required to interpret sections of the Mississippi Constitution. (c) Negroes were excluded from Democratic primary elections. During this time, victory in the Democratic primary in Mississippi was tantamount to election."

The above-quoted paragraph of the Complaint is broad, vague, ambiguous, nebulous and does not state the ultimate facts or tender any proper issue to these Defendants. The words "among others" in the first sentence of the above-quoted paragraph should be made more definite as it indi- [fol. 56] cates that Plaintiff may be or is relying upon claims which it fails or refuses to allege and divulge to the Defendants in this Complaint. If there are other claims in regard to white political supremacy, the Plaintiff should be required to tender a more definite statement and particularly identify these allegations in order to enable the Defendants to make a responsive pleading thereto.

As to subsection (a) of Paragraph 21 of the Complaint, the Plaintiff alleges that "negroes were not allowed to register to vote." Such an allegation is too broad, loose, and general and does not tender a proper issue to these Defendants and it does not properly and definitely state:

How,

Where,

What date or dates,

What were the facts as to or surrounding or under what circumstances,

When were any negroes not allowed to register to vote and who refused to allow them to register,

What are the names and addresses of the negroes who were not allowed to register to vote,

If by said allegation in said Paragraph 21 Plaintiff means to now charge these Defendants, or any of them, with committing any discrimination or discriminatory acts which caused or brought about this alleged condition based upon race, color, or previous condition of servitude or any lack of equal protection or due process of law.

[fol. 57] As to subsection (b) of Paragraph 21 of the Complaint, the Plaintiff alleges that "literate negroes were required to interpret sections of the Mississippi Constitution." This allegation is too broad, loose, and general and does not tender a proper issue to these Defendants as it does not properly and definitely state:

When,

Where,

By or through whom,

What date or dates,

What literate negroes were required to interpret sec- interpret sections of the Mississippi Constitution.

What were the facts as to or surrounding or under what circumstances

did any of these Defendants require literate negroes to interpret sections of the Mississippi Constitution,

What are the names and addresses of any literate negroes who were required to interpret sections of the Mississippi Constitution,

If by said allegation in said Paragraph 21 Plaintiff means to now charge these Defendants, or any of them, with committing any discrimination or discriminatory acts which caused or brought about this alleged condition based upon race, color, or previous condition of servitude or any lack of equal protection or due process of law.

As to subsection (c) of Paragraph 21 of the Complaint, the Plaintiff alleges that "negroes were excluded from [fol. 58] Democratic primary elections and during this time, victory in the Democratic primary in Mississippi was tantamount to election." This allegation is too broad,

loose, and general and does not tender a proper issue to these Defendants as it does not properly and definitely state:

Where,
By or through whom,
What date or dates,
What were the facts as to or surrounding or under what circumstances,
When were negroes excluded from Democratic primary elections,
What are the names and addresses of the negroes who were excluded from the Democratic primary elections,

If by said allegation in said Paragraph 21 Plaintiff means to now charge these Defendants, or any of them, with committing any discrimination or discriminatory acts which caused or brought about this alleged condition based upon race, color, or previous condition of servitude or any lack of equal protection or due process of law.

(5) As to Paragraph 35 of the Complaint, the Plaintiff alleges in said paragraph as follows:

> "35. The effect of the amendment to Section 244 is to place the burden of more stringent requirements for registration on negro citizens *or* voting age in Mississippi, the great majority of whom were not registered to vote. The white citizens of voting age, the great majority of whom were registered to vote, were not subjected to these requirements."

This allegation is too broad, loose, and general and does [fol. 59] not tender a proper issue to these Defendants as it does not properly and definitely state:

When,
Where,
By or through whom,
What date or dates,
What are the names and addresses of the negro citizens of voting age in Mississippi who have had greater burdens or more stringent requirements cast upon them than were cast upon white persons seeking to register,

What were the facts as to or surrounding or under what circumstances,

If by said allegations in Paragraph 35 Plaintiff means to now charge these Defendants, or any of the, with committing any discrimination or discriminatory acts which caused or brought about this alleged condition based upon race, color or previous condition of servitude or any lack of equal protection or due process of law.

(6) As to Paragraph 41 of the Complaint, the Plaintiff alleges in said paragraph as follows:

> "41. The defendant registrars of voters, vested with the discretion described in Paragraph 38, have used, are using, and will continue to use the interpretation test and the duties and obligations test to deprive otherwise qualified negro citizens of the right to register to vote without distinction of race or color. The existence of the interpretation test and the duties and obligations test as voter qualifications in Mississippi, their enforcement, and the threat of their enforcement [fol. 60] have deterred, are deterring and will continue to deter otherwise qualified negroes in Mississippi from applying for registration to vote."

This allegation is too broad, loose, and general and does not tender a proper issue to these Defendants as it does not properly and definitely state:

What are the names and addresses of the "otherwise qualified negroes" who have been deprived of the right to register to vote without distinction of race or color,

When,

Where,

By or through whom,

What date or dates,

What were the facts as to or surrounding or under what circumstances,

If by said allegations in said Paragraph 41 Plaintiff means to now charge these Defendants, or any of them, with committing any discrimination or discriminatory acts which caused or brought about this alleged condition based

upon race, color, or previous condition of servitude or any lack of equal protection or due process of law,

If by said allegation in said Paragraph 41 Plaintiff means to now charge these Defendants, or any of them, with deterring otherwise qualified negroes in Mississippi from applying for registration to vote.

(7) As to Paragraph 52 of the Complaint, the Plaintiff alleges in said paragraph as follows:

> [fol. 61] "52. The existence of the character qualification in Mississippi, its enforcement, and the threat of its enforcement, in the absence of any objective criteria which apply to all voters, have deterred, are deterring, and will continue to deter qualified negro citizens in Mississippi from applying to register to vote. The threatened use and the use by the Defendant registrars of voters of the character requirement deprive and will deprive otherwise qualified negro citizens of the right to register to vote without distinction of race or color."

This allegation is too broad, loose, and general and does not tender a proper issue to these Defendants, or any of them, as it does not properly and definitely state:

When,

Where,

By or through whom,

What date or dates,

What were the facts as to or surrounding or under what circumstances,

What are the names and addresses of all "qualified negro citizens" who have been deterred, are being deterred, and will continue to be deterred from registering to vote because of the character qualification,

If by said allegations in said Paragraph 52 Plaintiff means to now charge these Defendants, or any of them, with committing any discrimination or discriminatory acts which caused or brought about this alleged condition based upon race, color or previous condition of servitude or any lack of equal protection or due process of law.

[fol. 62] (8) As to Paragraph 69 of the Complaint, the Plaintiff alleges in said paragraph as follows:

> "69. Mississippi registrars of voters are required to apply these new and onerous requirements. The defendant registrars have applied such requirements. The existence of these onerous requirements, their enforcement, and the threat of their enforcement have deterred, are deterring, and will continue to deter, otherwise qualified negroes in Mississippi from applying to register to vote."

This allegation is too broad, loose, and general and does not tender a proper issue to these Defendants or any of them, as it does not properly and definitely state:

When,
Where,
By or through whom,
What date or dates,
What are the names and addresses of the "otherwise qualified negroes" who have been deterred from applying to register to vote,
What are "these new and onerous requirements" that Plaintiff refers to in this paragraph of the Complaint,
Which of these Defendants, if any, have applied these "new and onerous requirements" as referred to in this paragraph of the Complaint,
What were the facts as to or surrounding or under what circumstances were these "new and onerous requirements" applied and by whom were they applied,

If by said allegations in said Paragraph 69 Plaintiff means to now charge these Defendants, or any of them, [fol. 63] with committing any discrimination or discriminatory acts which caused or brought about this alleged condition based upon race, color or previous condition of servitude or any lack of equal protection or due process of law.

Respectfully Submitted this the 19th day of November, 1962.

H. K. Whittington, Circuit Clerk and Registrar of Amite County, Mississippi. T. F. Badon, Attorney at Law, Liberty, Mississippi. By: /s/ Joe G.

Gordon, Attorney at Law, Liberty, Mississippi. J. W. Smith, Circuit Clerk and Registrar of Coahoma County, Mississippi. Leon Porter, Attorney at Law, Clarksdale, Mississippi. Chester Curtis, Attorney at Law, Clarksdale, Mississippi. By: /s/ Semmes Luckett, Attorney at Law, Clarksdale, Mississippi. Mrs. Martha Turner Lamb, Circuit Clerk and Registrar of LeFlore County, Mississippi. Aubrey Bell, Attorney at Law, Greenwood, Mississippi. By: /s/ Hardy Lott, At-

[fol. 64] torney at Law, Greenwood, Mississippi. Mrs. Pauline Easley, Circuit Clerk and Registrar of Claiborne County, Mississippi. By: /s/ Joe Drake, Attorney at Law, Port Gibson, Mississippi. Wendell R. Holmes, Circuit Clerk and Registrar of the Pike County, Mississippi. By: /s/ B. D. Statham, Attorney at Law, Magnolia, Mississippi. T. E. Wiggins, Circuit Clerk and Registrar of Lowndes County, Mississippi. J. O. Sams, Jr., Attorney at Law, Columbus, Mississippi. W. H. Jolly, Attorney at Law, Columbus, Mississippi. By: /s/ William G. Burgin, Jr., Attorney at Law, Columbus, Mississippi. Ross R. Barnett, Joe T. Patterson, Heber A. Ladner, as members of the Mississippi State Board of Election Commissioners, and the Other Defendants.

[fol. 65] Dugas Shands, Will S. Wells, Guy N. Rogers, William A. Allain, Assistant Attorneys General of the State of Mississippi. Peter M. Stockett, Jr., Darryl A. Hurt, Special Assistant Attorneys General of the State of Mississippi. By: /s/ Will S. Wells, Assistant Attorney General of the State of Mississippi.

[fol. 66] Certificate of Service omitted in printing.

[fol. 67] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

[Civil Action No. 3312]

[Title omitted]

MOTION OF DEFENDANTS FOR SEPARATE TRIALS OF CLAIMS—Filed November 19, 1962.

The defendants move the Court, under Rule 42(b) of the Federal Rules of Civil Procedure to grant or order separate trials as to the constitutionality of the Amendments to the Constitution of the State of Mississippi and the Legislative Acts of the State herein complained of, on the one hand and all other claims of the Plaintiff on the other [fol. 68] hand, in furtherance of the convenience of this Court and in order to avoid prejudice to the defendants.

In the alternative defendants move that all claims of the plaintiff other than the claims of the unconstitutionality of the various amendments and statutes and the injunctive relief sought thereunder be referred for hearing to the district judge of the Southern District of Mississippi in order that this Court might be relieved of the taking and hearing of a myriad of testimony, perhaps extending over many days and because these matters can best be heard by a district judge in the normal course of orderly judicial procedure.

Respectfully submitted this the 19th day of November, 1962.

T. F. Badon, Attorney at Law, Liberty, Mississippi. Joe D. Gordon, Attorney at Law, Liberty Mississippi. Joe Drake, Attorney at Law, Port Gibson, Mississippi. Semmes Luckett, Attorney at Law, Clarksdale, Mississippi. Chester Curtis, Attorney at Law, Clarksdale, Mississippi. Aubrey Bell, Attorney at Law, Greenwood, Mississippi. Hardy Lott, Attorney at Law, Greenwood, Mississippi. J. O. Sams, Jr., Attorney at Law, Columbus, Mississippi. William Burgin, Attorney at Law, Columbus, Mississippi. W. H. Jolly, At-

[fol. 69] torney at Law, Columbus, Mississippi. B. D. Statham, Attorney at Law, Magnolia, Mississipi. Joe. T. Patterson, Attorney General for the State of Mississippi. Will S. Wells, Dugas Shands, Guy N. Rogers, and William A. Allain, Assistant Attorneys General for the State of Mississipi. Peter M. Stockett, Jr. and Darryl A. Hurt, Special Assistant Attorneys General for the State of Mississippi. By: /s/ Will S. Wells, Assistant Attorney General for the State of Mississippi, one of the Attorneys of Record for Defendants.

[fol. 70] Certificate of service omitted in printing.

[fol. 71] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3312

[Title omitted]

MOTION OF THE DEFENDANTS TO DISMISS THE COMPLAINT FOR LACK OF JURISDICTION OF THE SUBJECT MATTER—Filed November 19, 1962.

Comes now the Defendants, the State of Mississippi; Ross R. Barnett, Joe T. Patterson, Heber A. Ladner, as members of the Mississippi State Board of Election Commissioners; H. K. Whittington, Circuit Clerk and Registrar of Amite County; Mrs. Pauline Easley, Circuit Clerk and Registrar of Claiborne County; J. W. Smith, Circuit Clerk and Registrar of Coahoma County; Mrs. Martha Turner [fol. 72] Lamb, Circuit Clerk and Registrar of Le Flore County; T. E. Wiggins, Circuit Clerk and Registrar of Lowndes County; Wendell R. Holmes, Circuit Clerk and

Registrar of Pike County, and move the Court to dismiss the Complaint for lack of jurisdiction of the subject matter.

Respectfully submitted this the 19th day of November, 1962.

T. F. Badon, Attorney at Law, Liberty, Mississippi. Joe D. Gordon, Attorney at Law, Liberty, Mississippi. Joe Drake, Attorney at Law, Port Gibson, Mississippi. Semmes Luckett, Attorney at Law, Clarksdale, Mississippi. Chester Curtis, Attorney at Law, Clarksdale, Mississippi. Aubrey Bell, Attorney at Law, Greenwood, Mississippi. Hardy Lott, Attorney at Law, Greenwood, Mississippi. J. O. Sams, Jr., Attorney at Law, Columbus, Mississippi. William Burgin, Attorney at Law, Columbus, Mississippi. W. H. Jolly, Attorney at Law, Columbus, Mississippi. B. D. Statham, Attorney at Law, Magnolia, Mississippi. Joe T. Patterson, Attorney General for the State of Mississippi. Will S. Wells, Dugas Shands, Guy N. Rogers, and William A. Allain, Assistant Attorneys General for the State of Mississippi. Peter M. Stockett, [fol. 73] Jr. and Darryl A. Hurt, Special Assistant Attorneys General for the State of Mississippi. By /s/ Peter M. Stockett, Jr., Special Assistant Attorney General for the State of Mississippi, One of the Attorneys of Record for Defendants.

[fols. 74-92] Certificate of service omitted in printing.

[fol. 93] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3312

[Title omitted]

SEPARATE MOTIONS OF THE DEFENDANT, THE STATE OF MISSISSIPPI—Filed November 19, 1962

Comes the defendant, the State of Mississippi, by Joe T. Patterson, Attorney General, and without waiving or intending to waive any right, privilege or immunity which it has or may have under the Federal Rules of Civil Procedure or the Constitution and laws of the United States and the State of Mississippi, and preserving and reserving all of the same, and in accord with the applicable provisions of the Federal Rules of Civil Procedure and prior orders of this Court and moves the Court as follows:

[fol. 94] No.

MOTION OF THE STATE OF MISSISSIPPI TO DISMISS BECAUSE OF LACK OF JURISDICTION OF THE PERSON OF THIS DEFENDANT.

The defendant, State of Mississippi, moves the Court to dismiss the complaint or action against it because, as apparent from the face of the complaint, the Court does not have jurisdiction of the person of this defendant as to any matter or claim alleged or sought to be alleged in the complaint.

[fol. 95] No.

MOTION OF DEFENDANT, STATE OF MISSISSIPPI, TO DROP OR ELIMINATE AS A PARTY DEFENDANT HEREIN

The defendant, State of Mississippi, moves the Court to eliminate or drop it as a party defendant in this cause because there is a misjoinder of parties defendant by the inclusion of the State of Mississippi as a party defendant; as apparent from the face of the complaint, it fails to state a claim against this defendant upon which relief may be granted, and plaintiff cannot state a claim against the State under Title 42 U.S.C. 1971.

[fol. 96] No.

MOTION OF DEFENDANT, STATE OF MISSISSIPPI, TO DISMISS BECAUSE OF LACK OF CAPACITY IN PLAINTIFF TO SUE

The defendant, State of Mississippi, in accord with rule 9(a) of the Federal Rules of Civil Procedure, moves the Court to dismiss this action or complaint against it because, as apparent from the face of the complaint, plaintiff does not have the capacity to bring this action against it or sue it in this cause and plaintiff's capacity to sue is jurisdictional, in that no provision of the Constitution of the United States, including the amendments thereto, and specifically Amendments Fourteen and Fifteen, and no valid act of the Congress of the United States authorizes plaintiff to bring or prosecute this suit against this defendant, and no valid law or statute enacted by Congress authorizes the plaintiff to bring or maintain this action against this defendant.

[fol. 97] Respectfully submitted this the 19th day of November, 1962.

State of Mississippi, By: Joe T. Patterson, Attorney General for the State of Mississippi, Jackson, Mississippi. Will S. Wells, Dugas Shands, Guy N. Rogers and William A. Allain, Assistant Attorneys General for the State of Mississippi.

Peter M. Stockett, Jr. and Darryl A. Hurt, Special Assistant Attorneys General for the State of Mississippi. By: /s/ Will S. Wells, Assistant Attorney General for the State of Mississippi, one of the Attorneys of Record for Defendants.

[fol. 98] Certificate of service omitted in printing.

[fol. 99] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3312

[Title omitted]

SEPARATE MOTIONS OF THE DEFENDANTS, MRS. PAULINE EASLEY, J. W. SMITH, MRS. MARTHA TURNER LAMB AND T. E. WIGGINS—Filed November 19, 1962.

Without waiving or intending to waive any right, privilege or immunity which they or either of them has or may have under the Federal Rules of Civil Procedure or the Constitution and laws of the United States and the State of Mississippi, and preserving and reserving all of them and in accord with the applicable provisions of the Federal Rules of Civil Procedure and prior orders of this Court, the defendants, Mrs. Pauline Easley, J. W. Smith, Mrs. Martha Turner Lamb and T. E. Wiggins move the Court as follows:

[fol. 100] MOTION OF DEFENDANT, MRS. MARTHA TURNER LAMB, FOR SEVERANCE AND CHANGE OF VENUE—Filed November 19, 1962.

The defendant, Mrs. Martha Turner Lamb, moves the court for a severance and to change the venue as to her in this cause, and to transfer said cause of action alleged

against her to the United States District Court for the Northern District of Mississippi, in the Greenville Division thereof, and for grounds therefor says:

(1) The complaint, though drawn in vague, loose, general, abstruse and indefinite terms, may seek to allege illegal or discriminatory application by this defendant of the [fol. 101] constitutional and statutory provisions of the State of Mississippi referred to in the complaint, and may seek injunctive relief against this defendant in accordance with the provisions of Section 1971 (c) of Title 42, United States Code Annotated. This defendant is a resident of Leflore County, Mississippi, and all of her acts as Registrar in and for Leflore County, Mississippi, were and are performed in said county and in the jurisdiction of the United States District Court for the Northern District of Mississippi, Greenville Division, which is the proper forum for trial of any issues against this defendant alleged in said complaint.

(2) The State of Mississippi is not a proper party in this cause, and this defendant, Mrs. Martha Turner Lamb, is not an officer or agent of the State of Mississippi, nor has the State of Mississippi authorized, ratified or adopted any act of this defendant as Registrar of Leflore County, Mississippi, and therefore, there is a misjoinder of parties defendant in this cause which is prejudicial to the right of this defendant to have any cause of action asserted against her tried in the district where she resides, in which her official duties are performed, and where any alleged illegal or discriminatory acts by her purport to have been committed.

(3) This defendant will, as is apparent from the face of the complaint, be severely and irrevocably prejudiced, personally inconvenienced, the conduct of her official duties as Circuit Court Clerk and Registrar of Leflore County, Mississippi, will be unduly hampered, impeded and inter- [fol. 102] fered with, and witnesses in her behalf will be seriously and oppressively inconvenienced unless the severance and change of venue requested hereby is granted.

(4) This defendant has been joined as a party defendant with five other county registrars, whose acts in the administration of the constitutional and statutory provisions of the State of Mississippi respecting voting have no connec-

tion, directly or indirectly, with any acts of this defendant as Registrar in Leflore County; and evidence of any alleged illegal or discriminatory application of the constitution and statutes of Mississippi respecting voting by any one or more of the other defendant registrars, would not be admissible against, and would be highly prejudicial to, this defendant.

(5) Unless the severance and change of venue requested by this motion is granted the trial of any issues that may be alleged in the complaint against this defendant will be unduly delayed and impeded, and the orderly proceedings of this court will be interrupted and interfered with.

(6) The three Judge Court does not have any jurisdiction to hear and determine alleged violations of Section 1971 by this defendant, jurisdiction of the trial of such proceeding against this defendant being vested in the United States District Court, for the Northern District of Mississippi.

Bell & McBee, Lott & Sanders, Attorneys at Law, Greenwood, Mississippi, Attorneys for Mrs. Martha Turner Lamb. By /s/ Hardy Lott.

[fol. 103] MOTION OF DEFENDANT MRS. MARTHA TURNER LAMB, FOR SEPARATE TRIAL OF ANY ALLEGATIONS WHICH MAY BE ALLEGED IN THE COMPLAINT OF ILLEGAL OR DISCRIMINATORY APPLICATION BY HER OF THE CONSTITUTIONAL AND STATUTORY PROVISIONS OF THE STATE OF MISSISSIPPI—Filed November 19, 1962.

If the motion of the defendant, Mrs. Martha Turner Lamb, for severance and change of venue as to her is denied, then she moves in the alternative, that the court grant a separate trial of any and all allegations set forth in the complaint, of discriminatory administration or application of the constitutional and statutory provisions of the State of Mississippi by this defendant, if any there be, and for grounds therefor says:

(1) This defendant has been joined as a party defendant [fol. 104] with five other county registrars, whose acts in the administration of the constitutional and statutory pro-

visions of the State of Mississippi respecting voting have no connection, directly or indirectly, with any acts of this defendant as registrar of Leflore County, and evidence of any alleged illegal or discriminatory application of the constitution and statutes of Mississippi respecting voting by any one or more of the other defendant registrars, would not be admissible against, and would be highly prejudicial to, this defendant.

(2) Unless the separate trial of such issues, if any, requested by this motion is granted the trial of any issues that may be alleged in the complaint against this defendant will be unduly delayed and impeded, and the orderly proceedings of this court will be interrupted and interfered with.

Bell & McBee, Lott & Sanders, Attorneys at Law, Greenwood, Mississippi, Attorneys for Mrs. Martha Turner Lamb. By /s/ Hardy Lott.

[fol. 105] MOTION OF DEFENDANT, T. E. WIGGINS, FOR SEVERANCE AND CHANGE OF VENUE—Filed November 19, 1962.

The defendant, T. E. Wiggins, moves the court for a severance and to change the venue as to him in this cause, and to transfer said cause of action alleged against him to the United States District Court for the Northern District of Mississippi, in the Eastern Division thereof, and for grounds therefor says:

(1) The complaint, though drawn in vague, loose, general, abstruse and indefinite terms, may seek to allege illegal or discriminatory application by this defendant of the constitutional and statutory provisions of the State of Mississippi referred to in the complaint, and may seek injunctive relief against this defendant in accordance with the provisions of Section 1971(c) of Title 42, United States Code Annotated. This defendant is a resident of, and all of his acts as Registrar in and for Lowndes County, Mississippi were and are performed in the jurisdiction of the United States District Court for the Northern District of Mississippi, Eastern Division, which is the proper forum

for trial of any issues against this defendant alleged in said complaint.

(2) The State of Mississippi is not a proper party in this cause, and this defendant, T. E. Wiggins, is not an officer or agent of the State of Mississippi, nor has the State of Mississippi authorized, ratified or adopted any act of this defendant as Registrar of Lowndes County, Mississippi, and therefore, there is a misjoinder of parties defendant in this cause which is prejudicial to the right [fol. 106] of this defendant to have any cause of action asserted against him tried in the district where he resides, in which his official duties are performed, and where any alleged illegal or discriminatory acts by him purport to have been committed.

(3) This defendant will, as is apparent from the face of the complaint, be severely and irrevocably prejudiced, personally inconvenienced, the conduct of his official duties as Registrar of Lowndes County, Mississippi will be unduly hampered, impeded and interfered with, and witnesses in his behalf will be seriously and oppressively inconvenienced unless the severance and change of venue requested hereby is granted.

(4) This defendant has been joined as a party defendant with five other county registrars, whose acts in the administration of the constitutional and statutory provisions of the State of Mississippi respecting voting have no connection, directly or indirectly, with any acts of this defendant as Registrar in Lowndes County; and evidence of any alleged illegal or discriminatory application of the constitution and statutes of Mississippi respecting voting by any one or more of the other defendant registrars, would not be admissible against, and would be highly prejudicial to, this defendant.

(5) Unless the severance and change of venue requested by this motion is granted the trial of any issues that may be alleged in the complaint against this defendant will be unduly delayed and impeded, and the orderly proceedings of this court will be interrupted and interfered with.

[fol. 107] (6) The three Judge Court does not have any jurisdiction to hear and determine alleged violations of Section 1971 by this defendant, jurisdiction of the trial of

such proceeding against this defendant being bested in the United States District Court, for the Northern District of Mississippi.

[fol. 108] MOTION OF DEFENDANT, T. E. WIGGINS, FOR SEPARATE TRIAL OF ANY ALLEGATIONS WHICH MAY BE ALLEGED IN THE COMPLAINT OF ILLEGAL OR DISCRIMINATORY APPLICATION BY HIM OF THE CONSTITUTIONAL AND STATUTORY PROVISIONS OF THE STATE OF MISSISSIPPI—Filed November 19, 1962.

If the motion of the defendant, T. E. Wiggins, for severance and change of venue as to him is denied, then he moves in the alternative, that the court grant a separate trial of any and all allegations in the complaint of discriminatory administration or application of the constitutional and statutory provisions of the State of Mississippi by this defendant, if any there be, and for grounds therefor says:

(1) This defendant has been joined as a party defendant with five other county registrars, whose acts in the administration of the constitutional and statutory provisions of the State of Mississippi respecting voting have no connection, directly or indirectly, with any acts of this defendant as registrar in Lowndes County, and evidence of any alleged illegal or discriminatory application of the constitution and statutes of Mississippi respecting voting by any one or more of the other defendant registrars, would not be admissible against, and would be highly prejudicial to, this defendant.

(2) Unless the separate trial of such issues, if any, requested by this motion is granted the trial of any issues that may be alleged in the complaint against this defendant will be unduly delayed and impeded, and the orderly proceedings of this court will be interrupted and interfered with.

[fol. 109] MOTION OF DEFENDANT, MRS. PAULINE EASLEY, FOR SEVERANCE AND CHANGE OF VENUE—Filed November 19, 1962.

The defendant, Mrs. Pauline Easley, moves the court for a severance and to change the venue as to her in this cause, and to transfer said cause of action alleged against her to the United States District Court for the Southern District of Mississippi, in the western Division thereof, and for grounds therefor says:

(1) The complaint, though drawn in vague, loose, general, abstruse and indefinite terms, may seek to allege illegal or discriminatory application by this defendant of the constitutional and statutory provisions of the State of Mississippi referred to in the complaint, and may seek injunctive relief against this defendant in accordance with the provisions of Section 1971(c) of Title 42, United States Code Annotated. This defendant is a resident of, and all of her acts as Registrar in and for Claiborne County, Mississippi, were and are performed in the jurisdiction of the United States District Court for the Southern District of Mississippi, Western Division, which is the proper forum for trial of any issues against this defendant alleged in said complaint.

(2) The State of Mississippi is not a proper party in this cause, and this defendant, Mrs. Pauline Easley, is not an officer or agent of the State of Mississippi, nor has the State of Mississippi authorized, ratified or adopted any act of this defendant as Registrar of Claiborne County, Mississippi, and therefore, there is a misjoinder of parties defendant in this cause which is prejudicial to the right of this defendant to have any cause of action asserted against her tried in the district where she resides, in which her official duties are performed, and where any alleged illegal or discriminatory acts by her purport to have been committed.

[fol. 110] (3) This defendant will, as is apparent from the face of the complaint, be severely and irrevocably prejudiced, personally inconvenienced, the conduct of her official duties as Registrar of Claiborne County, Mississippi will be unduly hampered, impeded and interfered with, and witnesses in her behalf will be seriously and oppressively in-

convenienced unless the severance and change of venue requested hereby is granted.

(4) This defendant has been joined as a party defendant with five other county registrars, whose acts in the administration of the constitutional and statutory provisions of the State of Mississippi respecting voting have no connection, directly or indirectly, with any acts of this defendant as Registrar in Claiborne County; and evidence of any alleged illegal or discriminatory application of the constitution and statutes of Mississippi respecting voting by any one or more of the other defendant registrars, would not be admissible against, and would be highly prejudicial to, this defendant.

(5) Unless the severance and change of venue requested by this motion is granted the trial of any issues that may be alleged in the complaint against this defendant will be unduly delayed and impeded, and the orderly proceedings of this court will be interrupted and interfered with.

(6) The three Judge Court does not have any jurisdiction to hear and determine alleged violations of Section 1971 by this defendant, jurisdiction of the trial of such proceeding against this defendant being vested in the United States District Court, for the Southern District of Mississippi, in the Western Division thereof.

[fol. 111] MOTION OF DEFENDANT, MRS. PAULINE EASLEY, FOR SEPARATE TRIAL OF ANY ALLEGATIONS WHICH MAY BE ALLEGED IN THE COMPLAINT OF ILLEGAL OR DISCRIMINATORY APPLICATION BY HER OF THE CONSTITUTIONAL AND STATUTORY PROVISIONS OF THE STATE OF MISSISSIPPI—Filed November 19, 1962.

If the motion of the defendant, Mrs. Pauline Easley, for severance and change of venue as to her is denied, then she moves in the alternative, that the court grant a separate trial of any and all allegations set forth in the complaint, of discriminatory administration or application of the conconstitutional and statutory provisions of the State of Mississippi by this defendant, if any there be, and for grounds therefor says:

(1) This defendant has been joined as a party defendant with five other county registrars, whose acts in the administration of the constitutional and statutory provisions of the State of Mississippi respecting voting have no connection, directly or indirectly, with any acts of this defendant as registrar in Claiborne County, and evidence of any alleged illegal or discriminatory application of the constitution and statutes of Mississippi respecting voting by any one or more of the other defendant registrars, would not be admissible against, and would be highly prejudicial to, this defendant.

(2) Unless the separate trial of such issues, if any, requested by this motion is granted the trial of any issues that may be alleged in the complaint against this defendant will be unduly delayed and impeded, and the orderly proceedings of this court will be interrupted and interfered with.

[fol. 112] MOTION OF DEFENDANT, J. W. SMITH, FOR SEVERANCE AND CHANGE OF VENUE—Filed November 19, 1962

The defendant, J. W. Smith, moves the court for a severance and to change the venue as to him in this cause, and to transfer said cause of action alleged against him to the United States District Court for the Northern District of Mississippi, in the Delta Division thereof, and for grounds therefor says:

(1) The complaint, though drawn in vague, loose, general, abstruse and indefinite terms, may seek to allege illegal or discriminatory application by this defendant of the constitutional and statutory provisions of the State of Mississippi referred to in the complaint, and may seek injunctive relief against this defendant in accordance with the provisions of Section 1971(c) of Title 42, United States Code Annotated. This defendant is a resident of, and all of his acts as Registrar in and for Coahoma County, Mississippi, were and are performed in the jurisdiction of the United States District Court for the Northern District of [fol. 113] Mississippi, Delta Division, which is the proper

forum for trial of any issues against this defendant alleged in said complaint.

(2) The State of Mississippi is not a proper party in this cause, and this defendant, J. W. Smith, is not an officer or agent of the State of Mississippi, nor has the State of Mississippi authorized, ratified or adopted any act of this defendant as Registrar of Coahoma County, Mississippi, and therefore, there is a misjoinder of parties defendant in this cause which is prejudicial to the right of this defendant to have any cause of action asserted against him tried in the district where he resides, in which his official duties are performed, and where any alleged illegal or discriminatory acts by him purport to have been committed.

(3) This defendant will, as is apparent from the face of the complaint, be severely and irrevocably prejudiced, personally inconvenienced, and the conduct of his official duties as Registrar of Coahoma County, Mississippi, will be unduly hampered, impeded and interfered with, and witnesses in his behalf will be seriously and oppressively inconvenienced unless the severance and change of venue requested hereby is granted.

(4) This defendant has been joined as a party defendant with five other county registrars, whose acts in the administration of the constitutional and statutory provisions of the State of Mississippi respecting voting have no connection, directly or indirectly, with any acts of this defendant as Registrar of Coahoma County, and the evidence of any alleged illegal or discriminatory application of the constitu-[fol. 114] tion and statutes of Mississippi respecting voting by any one or more of the defendant registrars, would not be admissible against, and would be highly prejudicial to, this defendant.

(5) Unless the severance and change of venue requested by this motion is granted the trial of any issues that may be alleged in the complaint against this defendant will be unduly delayed and impeded, and the orderly proceedings of this court will be interrupted and interfered with.

(6) The three Judge Court does not have any jurisdiction to hear and determine alleged violations of Section 1971 by this defendant, jurisdiction of the trial of such

proceeding against this defendant being vested in the United States District Court, for the Northern District of Mississippi.

/s/ Semmes Luckett. /s/ Chester H. Curtis. /s/ Leon L. Porter, Jr., Attorneys for defendant, J. W. Smith, Clarksdale, Mississippi.

[fol. 115] MOTION OF DEFENDANT, J. W. SMITH, FOR SEPARATE TRIAL OF ANY ALLEGATIONS WHICH MAY BE ALLEGED IN THE COMPLAINT OF ILLEGAL OR DISCRIMINATORY APPLICATION BY HIM OF THE CONSTITUTIONAL AND STATUTORY PROVISIONS OF THE STATE OF MISSISSIPPI—Filed November 19, 1962.

If the motion of the defendant, J. W. Smith, for severance and change of venue as to him is denied, then he moves in the alternative, that the court grant a separate trial of any and all allegations set forth in the complaint, of discriminatory administration or application of the constitutional and statutory provisions of the State of Mississippi by this defendant, if any there be, and for grounds therefor says:

(1) This defendant has been joined as a party defendant with five other county registrars, whose acts in the administration of the constitutional and statutory provisions of the State of Mississippi respecting voting have no connection, directly or indirectly, with any acts of this defendant as registrar of Coahoma County, and evidence of any alleged illegal or discriminatory application of the constitution and statutes of Mississippi respecting voting by any [fol. 116] one or more of the other defendant registrars, would not be admissible against, and would be highly prejudicial to, this defendant.

(2) Unless the separate trial of such issues, if any, requested by this motion is granted the trial of any issues that may be alleged in the complaint against this defendant will be unduly delayed and impeded, and the orderly pro-

ceedings of this court will be interrupted and interfered with.

/s/ Semmes Luckett. /s/ Chester H. Curtis. /s/ Leon L. Porter, Jr., Attorneys for defendant, J. W. Smith, Clarksdale, Mississippi.

[fol. 117] Respectfully Submitted this the 19th day of November, 1962.

Joe Drake, Attorney at Law, Port Gibson, Mississippi. Semmes Luckett, Attorney at Law, Clarksdale, Mississippi. Leon Porter, Attorney at Law, Clarksdale, Mississippi. Chester Curtis, Attorney at Law, Clarksdale, Mississippi. Aubrey Bell, Attorney at Law, Greenwood, Mississippi. Hardy Lott, Attorney at Law, Greenwood, Mississippi. J. O. Sams, Jr., Attorney at Law, Columbus, Mississippi. William G. Burgin, Jr., Attorney at Law, Columbus, Mississippi. W. H. Jolly, Attorney at Law, Columbus, Mississippi. Joe T. Patterson, Attorney General for the State of Mississippi, Will S. Wells, Dugas Shands, Guy N. Rogers, and William A. Allain, Assistant Attorneys General for the State of Mississippi. Peter M. Stockett, Jr., and Darryl A. Hurt, Special Assistant Attorneys General for the State of Mississippi. By /s/ Will S. Wells, Assistant Attorney General for the State of Mississippi, One of the Attorneys of Record for Defendants.

[fol. 118] Certificate of service omitted in printing.

[fol. 119] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

[Title omitted]

Civil Action No. 3312

MOTIONS OF ALL DEFENDANTS—Filed November 19, 1962

Without waiving or intending to waive any right, privilege or immunity which they or either of them have or may have under the Federal Rules of Civil Procedure or the Constitution and laws of the United States and the State of Mississippi and preserving and reserving all of the same and in accord with the applicable provisions of the Federal Rules of Civil Procedure and the prior orders of this Court the Defendants move the Court as follows:

[fol. 120] No. 2

MOTION OF DEFENDANTS TO DISMISS BECAUSE THE COMPLAINT FAILS TO STATE A CLAIM AGAINST THEM UPON WHICH RELIEF MAY BE GRANTED BECAUSE OF CONCLUSIONARY ALLEGATIONS.

The defendants move the Court to dismiss the complaint or action herein filed against them because the complaint fails to state a claim against them upon which relief may be granted, the allegations of the complaint as against them, being laid or couched as statements of conclusion and not of fact.

[fol. 121] No. 3

MOTION OF DEFENDANTS TO DISMISS THE THIRD CLAIM OF THE COMPLAINT FOR FAILURE TO STATE A CLAIM

The defendants move the court to dismiss the Third Claim alleged in the complaint for the reason that the same does not state a claim or cause of action upon which relief may be granted against said defendants.

[fol. 122] No. 4

Motion of Defendants to Stay—Doctrine of Abstention

The defendants move the Court to stay or abstain from further proceedings in this cause upon the grounds that, as more fully shown by the complaint, this action seeks to construe constitutional and statutory provisions, local laws of the State of Mississippi, and restrain the enforcement thereof of action thereunder. Plaintiff intimates, or may be held to intimate, by conclusionary, vague and indefinite allegations that said constitutional provisions and statutes violate rights which it has under the various acts of Congress and the Federal Constitution, including amendments thereto.

Section 244 of the Constitution of the State of Mississippi of 1890 and the statutes implementing same were held by the Supreme Court of the State of Mississippi and of the United States to be valid and constitutional in the case of *Williams* vs. *Mississippi,* 73 Miss. 820, 42 L.Ed. 1012. Said Section 244 of the Constitution of the State of Mississippi of 1890 was amended and inserted in the Constitution of the State of Mississippi during the year 1955, and which amendment now constitutes Section 244 of the Constitution of the State of Mississippi, and the statutes implementing same were held to be valid and constitutional by a three-judge Federal District Court of the Southern District of Mississippi in the case of *Darby* vs. *Daniel,* 168 F. Supp. 170. [fol. 123] The present Section 244 and Section 241a of the Mississippi Constitution and the statutes implementing said sections and referred to in the complaint have not been passed upon, construed or interpreted by the Supreme Court of Mississippi nor any other court of Mississippi, and said Mississippi Courts have therefore not made or given any authoritative interpretation thereof.

Appropriate, adequate and effective remedies exist in the State of Mississippi under the Constitution and laws thereof, if plaintiff has or can state a proper claim against these defendants, together with the right to sue, whereby plaintiff can secure authoritative interpretation of the said present Section 244 of the Constitution of Mississippi and Section 241a thereof and their implementing statutes;

plaintiff would have equal rights to proceed in the Courts of the State of Mississippi as it has in this Court.

[fol. 124] No. 5

MOTION OF DEFENDANTS TO DISMISS AS TO STATE OF MISSISSIPPI BECAUSE OF LACK OF JURISDICTION OF THE SUBJECT MATTER AS AGAINST THE STATE.

The defendants move the Court to dismiss this action or the complaint as to the State of Mississippi because, as apparent from the face of the complaint, this Court does not have jurisdiction of the subject matter of the complaint or claims therein made against the State of Mississippi, in that neither the Constitution of the United States, inclusive of any amendment thereto, nor any valid law or statute of the United States, gives to Congress the right or authority to enact those portions or that portion of Title 42, U.S.C.A, Section 1971 upon which plaintiff purports to base or predicate its claim or claims in this cause against the State and said portions of said Section 1971 are void, invalid, unconstitutional or ineffectual as against the State because within the purview of this cause:

1. Congress has no right or authority to statutorially provide that the act of any defendant registrar which purports to constitute a deprivation of any right or privilege purporting to be secured by Subsection (a) of said Section 1971 shall be determined the act of the State of Mississippi, because the State has the exclusive power and authority to select, choose and determine who shall be its [fol. 125] agents and to what extent, if any, it shall be bound by their acts; any act of any defendant registrar which may constitute a deprivation of any right or privilege secured by said subsection is, under the law of the State of Mississippi, illegal and unauthorized and constitutes a tort, and the State of Mississippi is not and cannot be made or held liable therefor in this or any other Court.

2. Congress does not have the right or authority to create a cause of action against the State under the circumstances involved in this cause.

3. Congress has no power or authority to statutorially

or otherwise create or make an agent of or for the State of Mississippi, nor determine the extent of the authority of such an agent.

4. No law or statute of the State of Mississippi permits, authorizes or creates a cause of action against it or makes it liable for any officer or agent of the State of Mississippi which is illegal or unauthorized.

5. No defendant registrar is an officer or agent of the State of Mississippi nor can he, or they, be held to be such under the circumstances involved in this cause.

6. The State of Mississippi has not authorized or ratified and could not ratify any act of any defendant registrar which may constitute a deprivation of any right or privilege referred to in said subsection of said Section 1971, Title 42, U.S.C.A.

7. Under the law and statutes of the State of Mississippi [fol. 126] dealing with the liability of a principal for acts of his or its agents, the State of Mississippi would not be liable, suable or responsible for the act of any defendant registrar which may constitute a deprivation of the rights and privileges secured by said subsection, even if the State of Mississippi were not a State with all of its rights, privileges and immunities.

8. The State of Mississippi is not a "person" as said word is used in said Section 1971.

9. Plaintiff is not a "person" within the meaning and provisions of the Fourteenth and Fifteenth Amendments to the Constitution of the United States.

[fol. 127] No. 6

MOTION OF DEFENDANTS TO STAY ALL PROCEEDINGS UPON CERTAIN PURPORTED CLAIMS OF PLAINTIFF UNTIL THE CONSTITUTIONAL QUESTIONS INTIMATED BY PLAINTIFF HAVE BEEN DETERMINED.

The defendants move the Court to stay any and all proceedings upon any allegations of discriminatory administration or application of the constitutional and statutory provisions of the State of Mississippi referred to in the complaint, if any there be, until after the Court shall have

acted or passed upon or determined the constitutionality of the sections of the Mississippi Constitution and statutes referred to in the complaint if the Court should determine that it has jurisdiction of the person of the State and of the subject matter of the claims made against it and whether the complaint states a cause of action against the State upon which any relief may be granted.

The complaint, though drawn in vague, loose, general, abstruse and indefinite terms, may seek to allege illegal or discriminatory application of the constitutional and statutory provisions of the State of Mississippi referred to in the complaint. These defendants will, as apparent from the face of the complaint, be severely and irreparably prejudiced unless the Court stays the proceedings as above requested.

Justice and fairnes suggests and demands that the Court take the action under the circumstances mentioned, supra, as requested by this motion.

[fol. 128] No. 7

MOTION OF DEFENDANTS TO DISMISS THIS COMPLAINT OR ACTION AS TO ALL CHALLENGES, IF ANY THERE BE, AS TO THE CONSTITUTIONALITY OF ALL CONSTITUTIONAL AND STATUTORY PROVISIONS MENTIONED IN THE COMPLAINT.

The defendants move the Court to dismiss this action or the complaint herein filed against them as to any and all claims against or attacks upon the constitutionality of any constitutional or statutory provisions of the State of Mississippi, if any there be in the complaint, because as apparent from the face of the complaint plaintiff has no power or authority to make any challenges to the constitutionality of said provisions; that portion of Section 1971, Title 42, U.S.C.A. upon which plaintiff purports to base its alleged challenges to the constitutionality of said provisions restricts, assuming plaintiff has the right to proceed in this court against the defendants under said federal statute, but which the defendants deny, plaintiff solely and alone to an action complaining of illegal or discriminatory action or acts, and does not give or purport to give plaintiff any

right or authority to challenge the constitutionality of any provisions of the Constitution of the State of Mississippi, or any statute thereof.

[fol. 129] Respectfully Submitted this the 19th day of November, 1962.

T. F. Badon, Attorney at Law, Liberty, Mississippi. Joe D. Gordon, Attorney at Law, Liberty, Mississippi. Joe Drake, Attorney at Law, Port Gibson, Mississippi. Semmes Luckett, Attorney at Law, Clarksdale, Mississippi. Leon Porter, Attorney at Law, Clarksdale, Mississippi. Chester Curtis, Attorney at Law, Clarksdale, Mississippi. Aubrey Bell, Attorney at Law, Greenwood, Mississippi. Hardy Lott, Attorney at Law, Greenwood, Mississippi. J. O. Sams, Jr., Attorney at Law, Columbus, Mississippi. William Burgin, Attorney at Law, Columbus, Mississippi. W. H. Jolly, Attorney at Law, Columbus, Mississippi. B. D. Statham, Attorney at Law, Magnolia, Mississippi. Joe T. Patterson, Attorney General for the State of Mississippi. Will S. Wells, Dugas Shands, Guy N. Rogers, and William A. Allain, Assistant Attorneys General for the State of Mississippi. Peter M. Stockett, Jr., and Darryl A. Hurt, Special Assistant Attorneys General for the State of Mississippi. By: /s/ Will S. Wells, Assistant Attorney General for the State of Mississippi, One of the Attorneys of Record for Defendants.

[fol. 130] Certificate of service omitted in printing.

[fol. 131] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

[Title omitted]

Civil Action No. 3312

MOTION OF DEFENDANT, W. R. HOLMES FOR SEVERANCE—Filed November 20, 1962.

The defendant, W. R. Holmes, moves the court for a severance as to him in this cause, and for grounds therefor says:

(1) The State of Mississippi is not a proper party in this cause, and this defendant, W. R. Holmes, is not an officer or agent of the State of Mississippi, nor has the State of Mississippi authorized, ratified or adopted any act of this defendant as Registrar of Pike County, Mississippi, and therefore, there is a misjoinder of parties defendant in this cause which is prejudicial to the right of this defendant to have any cause of action asserted against him tried with the other defendants as presently aligned.

(2) This defendant will, as is apparent from the face of the complaint, be severely and irrevocably prejudiced, personally inconvenienced, the conduct of his official duties as Registrar of Pike County, Mississippi will be unduly ham-
[fol. 132] pered, impeded and interfered with, and witnesses in his behalf will be seriously and oppressively inconvenienced unless the severance requested hereby is granted.

(3) This defendant has been joined as a party defendant with five other county registrars, whose acts in the administration of the constitutional and statutory provisions of the State of Mississippi respecting voting have no connection, directly or indirectly, with any acts of this defendant as Registrar of Pike County; and evidence of any alleged illegal or discriminatory application of the constitution and statutes of Mississippi respecting voting by anyone or more of the other defendant registrars, would not be admissible against, and would be highly prejudicial to, this defendant.

(4) Unless the severance requested by this motion is granted the trial of any issues that may be alleged in the complaint against this defendant will be unduly delayed and impeded, and the orderly proceedings of this court will be interrupted and interfered with.

(5) The three Judge Court does not have any jurisdiction to hear the determine alleged violations of Section 1971 by this defendant, jurisdiction of the trial of such proceeding against this defendant being vested in the United States District Court, for the Southern District of Mississippi.

Respectfully submitted on this, the 16th day of November, A.D., 1962.

/s/ B. D. Statham, One of The Attorneys for W. R. Holmes, One of The Defendants.

[fols. 133-181] Certificate of Service omitted in printing.

[fol. 182] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

[Title omitted]

Civil Action No. 3312

ORDER CARRYING CERTAIN MOTIONS WITH CASE—March 12, 1963

This cause having come on for hearing in open court on March 8, 1963, all parties being represented by counsel, and the Court having considered the motions, arguments and briefs of the parties, enters the following order:

1. Ordered that the motions by the defendants to strike or for a more definite statement of the complaint be and the same are hereby denied.

2. Ordered that the motions of the defendants to dismiss

the complaint for lack of jurisdiction of the subject matter, the motions to quash the three-judge court as to certain specified matters and the motion to strike the third claim of the complaint be and the same are hereby carried with the case on the merits.

3. Ordered that the motions for separate trials of claims and the motions for severance are deferred until after discovery is complete and without prejudice to the defendants to further press these motions after completion of the discovery process.

4. The motion to stay—doctrine of abstention is deferred for decision at a later date.

The rulings in this order carrying certain motions with the case or deferring action until discovery processes are complete shall not affect the parties going forward with discovery and the filing of the answers or other responsive pleadings.

Ordered this 12th day of March, 1963.

Harold Cox, United States District Judge.

[fol. 183] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

[Title omitted]

Civil Action No. 3312

ORDER ENLARGING TIME TO ANSWER—March 12, 1963

The Defendants, and each of them, having requested additional time within which to file their respective answers to the Complaint in this cause and it having been made known to the Court that the Plaintiff intends to file an amendment to its Complaint, it is ordered that the Defendants, and each of them, be and they are hereby granted thirty days from the date of service on them, respectively, of the proposed amendment to the Complaint within which

to file their respective answers or responsive pleadings [fols. 184-188] to the Complaint and Amendment thereto in this cause.

Ordered this the 12th day of March, 1963.

Harold Cox, United States District Judge.

[fol. 189] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

[Title omitted]

Civil Action No. 3312

AMENDMENT TO COMPLAINT—Filed March 12, 1963.

Pursuant to Rule 15, F.R.C.P., plaintiff makes the following amendments to its Complaint filed on August 28, 1962. No responsive pleading by any defendant has been filed.

1. Paragraph 41 on page 11 of the Complaint is amended to read as follows: (The italicized portion constitutes the amendment.) The defendant registrars of voters, *the defendant State of Mississippi and its agents and officials*, vested with the discretion described in paragraph 38, have used, are using, and will continue to use the interpretation test and the duties and obligations test to deprive otherwise qualified Negro citizens of the right to register to vote without distinction of race or color, *and such deprivations, occurring by the adoption, use and threat of use of said tests, have been and are pursuant to a pattern and practice of racial discrimination.* The existence of the interpretation test and the duties and obligations test as voter qualifications in Mississippi, their enforcement and the threat of their enforcement have deterred, are deterring and will continue to deter, otherwise qualified Negroes in Mississippi from applying for registration to vote.

2. Paragraph 52 on page 18 of the Complaint is amended to read as follows: (The italicized portion constitutes the

amendment.) The existence of the character qualification in Mississippi, its enforcement, and the threat of its enforcement, in the absence of any objective criteria which [fol. 190] apply to all voters, have deterred, are deterring, and will continue to deter qualified Negro citizens in Mississippi from applying to register to vote. The threatened use and the use by the defendant registrars of voters, *the defendant State of Mississippi and its agents and officials,* of the character requirement, deprive and will deprive otherwise qualified Negro citizens of the right to register to vote without distinction of race or color, *and such deprivations, occurring by the adoption, use and threat of use, of the character requirement, have been and are pursuant to a pattern and practice of racial discrimination.*

3. Paragraph 59 on page 21 of the Complaint dealing with the Mississippi records destruction statute is amended by adding the following sentence at the end of said paragraph: The records destruction statute referred to in this paragraph is an integral part of the pattern and practice of racial discrimination of the defendants as alleged in this Complaint.

4. Paragraph 69 on page 31 of the Complaint is amended to read as follows: (The italicized portion constitutes the amendment.) Mississippi registrars of voters are required to apply these new and onerous requirements. The defendant registrars, *and the defendant State of Mississippi and its agents and officials,* have applied such requirements. The existence *and use* of these onerous requirements, *the* enforcement and the threat of their enforcement, have deterred, are deterring, and will continue to deter otherwise qualified Negroes in Mississippi from applying to register to vote, *and deprive and will deprive such Negroes of the right to register to vote without distinction of race or color, such deprivations, occurring by the adoption, use and threat of use, or these new and onerous requirements, have been and are pursuant to a pattern and practice of racial discrimination.*

5. Paragraph 5 of the prayer for relief on page 32 of the Complaint is amended to read as follows: Make a finding that the defendant county registrars, *the defendant State of Mississippi, its agents and officials,* have deprived

[fol. 191] Negro citizens of the right secured by 42 U.S.C. 1971(a); and that such deprivations have been and are pursuant to a pattern and practice of racial discrimination.

/s/ Burke Marshall, Assistant Attorney General.
/s/ John Doar, Attorney, Department of Justice.
/s/ D. Robert Owen, Attorney, Department of Justice.

[fol. 192] Certificate of Service omitted in printing.

[fol. 193] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

[Title omitted]

Civil Action Number 3312

RULINGS OF THREE JUDGE COURT ON VARIOUS MOTIONS—Filed March 12, 1963.

By Judge Brown:

Now this part I believe we had better have the reporter write up. In the first place I think the reporter ought to get paid for all of his work today. I hope somebody thinks enough of what was said to warrant his having some production for pay, but this part we do want written up so the members of the Court can have it and as many of the counsel as desire it and I will leave those arrangements between you and the reporter. We are going to announce some rulings and we are reading here from the listing prepared at the Court's request by Mr. Wells and the effort here is merely to indicate in general terms our rulings so that orders may be prepared in the ordinary course and to the extent that there is any difference about terminology the Court would certainly want counsel to indicate specifically the phraseology that they offer in lieu of their adversary.

Number 1 Motion to Strike and Motion for More Definite Statement. These motions will be denied.

Number 2 Motion to Stay—Doctrine of Abstention. The Court announces no decision at this time on the merits and will have a decision very shortly, but the Court does state that deferring action on this shall not interfere or interrupt the filing of the answers, the filing of pleadings or the discovery actions. Discovery is to go forward from this moment on.

[fol. 194] Number 3 Motion to Dismiss the Complaint for Lack of Jurisdiction of the Subject Matter. This will be taken with the case and by way of explanation I think it is

fair to state here that the argument convinced the Court that this really goes so much to the ultimate merits that the Court can only rule on it when it finally hears the case.

Number 4 Motion to Quash Three-Judge Court as to Certain Specified Matters. This is to be taken with the case and again by way of explanation this involved primarily the effect of the Williams decision by the Supreme Court and the Darby Fulton decision by this Court at an earlier date and it appears to the Court again that the extent to which those decisions are either binding to foreclose or as a matter of comity or persuasiveness is again a matter which will be determined on the merits of the case.

Five is in two parts. The second part reads the Motion to Strike the Third Claim of the Complaint. This will be taken with the case. Now the other part of five reads Motion for Severance on Behalf of Individual Clerks and then number 6 is Motion for Separate Trial of Claims. Number 5 the action on that is deferred for the moment, but the Court states that it will require before the trial begins and probably as part of pre-trial conference which will have to be held that suitable arrangements and provisions be made to make certain that none of the registrars is kept in attendance unnecessarily and that due regard will be kept for the performance of their official duties. It is too early for the Court to tell or determine to what extent it is either proper or desirable that they remain in the case fully so we simply defer action on that.

By Judge Cox:

Let's make it clear we are deferring action on that part of the motion until after the completion of the discovery process after which time the motion may be pressed again and we will be in a better position at that time we think to rule on the motion we think in fairness to all sides.

[fol. 195] By Judge Brown:

Number 6 Motion for Separate Trial of Claims. We defer action on that until the completion of the discovery process so that the Court can rule on the matter more intelligently, the defendants being entitled to renew that or such parts of it as they think advisable or such modifi-

cations of that same sort of relief and I say by way of explanation that none of us want a longer trial than is needed. We have other work to do and you do too and I think a lot of this is going to kind of wash out anyway because lawyers have a way of working these things down.

Then that leaves the Government's motion for production under Rule 34 and it will be granted. Now I suppose it is an idle thing for a judge to ever preach but the Court is also in full agreement that the discovery rules should be very liberally applied as to both sides and that is going to be the spirit in which all of the discovery motions, interrogatories, motions for production, requests for admissions will be treated. Of course we will try faithfully to comply with the law and the rules but this thing is awfully big as it now appears but I think a conscientious effort on the part of the lawyers in the discovery process we feel it will come down to the point where with a very serious pre-trial conference schedule after the discovery process is completed we can really have a blueprint for the trial that is efficient for the lawyers, the judges, the witnesses and the litigants and preserve to everybody their full rights. Now it is my, I will just speak personally here I think it is the spirit of the rules that they are largely self-executed and again without asking anyone to sacrifice a single right or position here we do ask counsel to bear in mind constituted as a three-judge court it is awkward for us to handle these interim matters and to the maximum extent possible we just urge the counsel to go forward with discovery with a minimum of report to the Court for formal rulings and motions. I think there are so many ways to preserve [fol. 196] your position, particularly on depositions so that your rights are fully preserved by presentation orally on the trial or in the pre-trial conference. Now I had spoken to Mr. Wells I think to suggest that we might want to explore possible trial dates. We are now of the view that that is premature, that the discovery should go forward with vigor if I may use that word and when this nears its end the Court will call for a conference of counsel and find out the disposition as to the trial.

By Mr. Burgin:

Referring to the pre-trial conference do we have to make a motion for that?

By Judge Brown:

I will say the Court will do that on its own.

By Judge Cox:

I will say when counsel let it be known to the Court you have completed your discovery process.

By Mr. Luckett:

I am one of the attorneys for one of the defendants and you said that the discovery proceeding should go forward. I think the Government's position is they will not be able to furnish us the discovery we ask for until they inspect and analyze the records they ask for now. They have got our records but I would think it would all go along at the same time but I don't believe that the Government is in a position at this time for respond to our interrogatories.

By Mr. Doar:

That is true to the extent that we could give more accurate responses and full responses in Coahoma than we could in Lowndes County, but if you would serve the interrogatories on us we would start to get the answers out forthwith and in those counties where records gives supplemental information and we would furnish the additional information when we got it.

[fol. 197] By Judge Brown:

I think your point is well taken and I think that this is a question in which all parties in the best of faith will simply have to furnish the information as soon as they can. When I suggest that the discovery should go forward it didn't mean everybody had to move all at one time.

By Mr. Doar:

We would appreciate getting the interrogatories as soon as possible from those who make them.

By Mr. Shands:

Your Honors, I am concerned about the motion that was made on behalf of the State of Mississippi to dismiss as to it on the basis that the last sentence of 1971c is invalid and unconstitutional and therefore the State of Mississippi is improperly joined. I understand that the Court has indicated it will carry that to the case. Would you permit or desire additional briefs from the defendants and plaintiff if they care for it. Now tied to that is a motion Mr. Burgin said he could not present fully to the Court. We would like to at this time bring up this proposition to the Court. What length of time would the Court permit these briefs to be filed in? Secondly we would like very much and we think it is necessary to the fair presentation of this case that that motion of the State be acted on before you reach the merits of this lawsuit and we would like an opportunity when the briefs are in to appear before the three-judge court and wherever you may want us because we want to argue that motion and with all deference to the Court we are quite serious about that motion.

By Judge Brown:

I have no doubt about that but I must say, Mr. Shands, that I would be led to believe and I do not mean this in a critical sense at all that it was suggested by Mr. Wells that this motion be carried along with the case and that is why we did not hear argument on it today and you may have thirty days and I will speak my own personal view [fol. 198] on it. No ruling will be made eliminating the State of Mississippi until the discovery process is completed. I think it again probably goes to that extent but if you want to file briefs it is all right.

By Mr. Wells:

It is the question I announced this morning I had talked with you about because of my situation with my wife and we had not been able to brief it as adequately as we wanted to and I frankly didn't feel capable of making an argument because of that.

By Judge Cox:

What motion was that?

By Mr. Wells:

Dismissing the State primarily that part of the 1971 which makes the registrar an agent of the State is unconstitutional in one sovereignity is creating an agent for another sovereignity.

By Mr. Shands:

We would then at the end of the discovery process then may we point toward a presentation of that?

By Judge Brown:

We will take it on brief. I am not at all sure we will allow you oral argument on it. That depends on the situation of us as individuals and our ability to find time we can hear it but there is always a likelihood that it could be presented at the pre-trial conference which would be attended by all members of the Court.

By Mr. Shands:

Might we be permitted by the generosity of the Court to renew it?

By Judge Brown:

Oh yes and we will consider it very favorably.

By Mr. Shands:

I know the Court like us wishes to reach the right result.

By Judge Brown:

One reason I would say we are to follow this suggestion originally made that we take it along that it has such an immediate effect upon the registrars because of lack of [fol. 199] venue, jurisdiction, geographical jurisdiction and we ought to get this part of it done.

By Mr. Shands:

That is what forces it to the front of my mind, Your Honor, the very problem that is concerning the Court because I know that this Court would not want to require these men all six in this case if they should not properly be there and if the motion of the State as both the Court and I recognize it is very important on that feature I am sure the Court would want to dispose of that if possible before we get into the merits.

By Judge Brown:

On the merits of that thing without trying to prejudge it since it goes to registrars as such we are a long long ways from that and we have so many acute problems that we need not reach out onto academic problems.

By Mr. Statham:

My clerk is in the hospital with a heart attack and obviously in so far as he is concerned I am not going to be able to file an answer and I doubt if some of these other gentlemen can file it within ten days and I wondered if at this time orally the Court would grant us an extension.

By Judge Brown:

I would leave that to Judge Cox as long as it is clearly understood that the filing of the answers doesn't toll the discovery.

By Judge Cox:

How much time did you want?

By Mr. Statham:

In so far as my county, I think I am probably speaking for more, we would need thirty days.

By Judge Cox:

Send me an order. That is not going to effect discovery but everybody wants thirty days.

[fol. 200] By Judge Brown:

You see any objection to that, Mr. Doar?

By Mr. Doar:

Everybody has got sick clients like Mr. Statham. There is one amendment we wish to make to the complaint with respect to this problem of a pattern or practice and set it forth and we intend to file within the next day or two this amendment, it will be a page or so long and we have no objection.

By Mr. Statham:

Of course we do not know what he is going to file.

By Judge Cox:

Let one counsel send me one order for all defendants and I will sign it for thirty days, thirty days after receipt by counsel of the amendment of the complaint.

By Judge Brown:

This will be sort of an amended one page amendment or two page amendment. Any pleas that go to those two pages can be filed but do not use it as a vehicle in which to renew all of the motions which we have disposed of heretofore.

By Mr. Doar:

Your Honor, what the amendment is is to make clear the issue that troubled the Court at the end of the hearing in which the Court said it desired additional briefs

on the pattern or practice to this particular question and we want to just set forth the position of the pleadings and then to submit briefs on it whatever time the Court desires. That is the purpose.

By Judge Brown:

I take that as it follows that the Court is going to be disposed to allow the amendment so you can count on having to answer it and whatever effect it might have on the merits of the case may be determined later.

[fol. 201] By Mr. Doar:

We didn't prepare an order. It isn't really necessary to have an order unless you want it.

By Judge Cox:

No sir.

By Mr. Wells:

Do you want us to or who do you want to draw orders?

By Judge Brown:

I am going to leave that to you and Mr. Doar to work out and I would say submit them as you normally do to Judge Cox and his Clerk and they will distribute them to the other members of the Court.

By Judge Cox:

I am, we are not going to follow the new rule of the Supreme Court. I am going to sign judgments in this district.

By Mr. Wells:

Now Judge, with reference to our discovery as I understand that would not wait on the filing of the answer.

By Judge Brown:

No sir.

By Mr. Wells:

But we are in other words we are to go forward with that with reasonable dispatch.

By Judge Cox:

Just as if you had already answered.

By Judge Brown:

This case has been on file since September or August. The difficulties of course are tremendous with three judges all of whom are as busy as we are forced to be now and scattered as much as we are now and with lawyers who are also faced with very pressing problems on many fronts. I would anticipate it is going to be a rather prodigious effort, it is going to take some time but it ought to go along with real dispatch and the Court is disposed to give it that dispatch and to that end I think we leave to the lawyers to work out some suitable arrangement by which [fol. 202] there are effective spokesmen for both sides. We pretty well identify Mr. Doar and I understand from Mr. Wells you will probably take the lead but that is the first order of business before the lawyers so the matter can go forward.

By Mr. Shands:

I have one question, Your Honor. Suppose in the course of discovery suppose we shall have answered before the discovery proceedings are completed. Suppose in the course of discovery we find matters that would cause us to desire to amend our answers. Will there be difficulty in getting leave of the Court to make those amendments or can that be made somewhat informally and Judge Cox handle them?

By Judge Cox:

I will handle them.

By Judge Brown:

I think we will leave Judge Cox to handle them. Again my own view and I believe I speak Judge Wisdom's on this and I am sure it is Judge Cox's I think great liberty ought to be allowed in amendments. I think the pleadings are going to amount to very little significance but I do think the evidence that is developed in the discovery process of course will be. Does anybody else have any matters that they want to bring up?

By Mr. Doar:

I wanted to know with respect to the discovery of the individual counties the records would the attorneys for the defense like me to contact the individual counsel or through Mr. Wells?

By Mr. Wells:

I would rather if you will I would much prefer that you contact the individual attorneys, Mr. Doar, because that part of it is very much something that they are on top of and not me.

By Judge Brown:

I think it is permissible for the Court to request that the counsel for the defendants I am not asking you to do it now because you may want to talk about it but either [fol. 203] with or without restrictions I think one or two people ought to be designated to whom Mr. Doar can communicate with a view of having some kind of response.

By Judge Cox:

They might not want to reduce it to one or two though because these registrars might want their counsel to speak.

By Mr. Burgin:

We have three attorneys.

By Judge Brown:

I don't think an opponent ought to have to discuss it with all three of them. I think we are perfectly willing to leave it to the lawyers as long as we don't have a merry go round.

(This concluded the hearing of this cause.)

[fols. 204-205] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3312

[Title omitted]

ORDER FURTHER ENLARGING TIME TO ANSWER—April 1, 1963

The Defendants, and each of them, having requested a further enlargement of time within which to file their respective answers to the Complaint in this cause and the Court having considered the same, being fully advised in the premises and being of the opinion that additional time should be allowed, it is ordered that the Defendants, and each of them, be and they are hereby granted thirty (30) days additional time, that is to say, until and including May 13, 1963 within which to file their respective answers to the Complaint and amendment thereto in this cause.

Ordered this the 1st day of April, 1963.

Harold Cox, United States District Judge.

[fol. 206] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action Number 3312

UNITED STATES OF AMERICA, Plaintiff,

v.

STATE OF MISSISSIPPI; ROSS R. BARNETT, JOE T. PATTERSON, HEBER A. LADNER, as members of the MISSISSIPPI STATE BOARD OF ELECTION COMMISSIONERS; H. K. WHITTINGTON, Circuit Clerk and Registrar of Amite County; MRS. PAULINE EASLEY, Circuit Clerk and Registrar of Claiborne County; J. W. SMITH, Circuit Clerk and Registrar of Coahoma County; MRS. MARTHA TURNER LAMB, Circuit Clerk and Registrar of LeFlore County; T. E. WIGGINS, Circuit Clerk and Registrar of Lowndes County; WENDELL R. HOLMES, Circuit Clerk and Registrar of Pike County, Defendants.

Transcript of Hearing on Defendants' Motion to Strike and Motion for More Definite Statement; Motion to Stay—Doctrine of Abstention; Motion to Dismiss the Complaint for Lack of Jurisdiction of the Subject Matter; Motion to Quash Three-Judge Court as to Certain Specified Matters; Motion for Severance on Behalf of Individual Clerks and Motion to Strike Third Claim of Complaint; and Motion for Separate Trial of Claims—March 8, 1963.

APPEARANCES:

Honorable John Doar and Honorable D. Robert Owen, of Department of Justice, Washington, D.C.; Honorable [fol. 207] Robert E. Hauberg, United States Attorney, Jackson, Mississippi;

All Appearing for the Plaintiff.

Messrs. Joe T. Patterson, Guy N. Rogers, Will S. Wells, Dugas Shands, Peter M. Stockett, Jr., and William A. Allain, Attorney General's Office, State of Mississippi, Jackson, Mississippi;

Honorable Joe Drake, Port Gibson, Mississippi; Honorable Semmes Luckett, Clarksdale, Mississippi; Honorable Chester Curtis, Clarksdale, Mississippi; Honorable Aubrey Bell, Greenwood, Mississippi; Honorable Hardy Lott, Greenwood, Mississippi; Honorable J. O. Sams, Jr., Columbus, Mississippi; Honorable William Burgin, Columbus, Mississippi; Honorable W. H. Jolly, Columbus, Mississippi; Honorable B. D. Statham, Magnolia, Mississippi;

All appearing for the Defendants.

Be it Remembered that on, to-wit, Friday, March 8, 1963, the above styles and numbered cause came on for hearing before the Honorable John R. Brown, United States Circuit Judge, the Honorable John Minor Wisdom, United States Circuit Judge, and the Honorable William Harold Cox, United States District Judge, on the above motions, at Jackson, Mississippi, in the Jackson Division, when the following proceedings were had and entered of record:

[fol. 208] By Judge Brown:

Now Mr. Wells called me in Houston about a week ago to ask as to the manner of having the hearing. It was my view then that we would leave it pretty much to the lawyers to decide the categories to be argued and the order and I asked that he consult with Mr. Doar about this and I understand that you have done that and has furnished to the Court a list of six motions to be argued and I believe there is one for the government too that should follow that and you desire to proceed in that order?

By Mr. Wells:

Yes sir.

By Mr. Doar:

Its agreeable with the Government, Your Honor.

By Judge Brown:

There was some question in the Court's mind this morning whether we ought not to hear the motion on jurisdiction first but would you prefer your schedule that you propose here, Mr. Wells.

By Mr. Wells:

On the if the Court please after having communicated with the various members of the panel and Mr. Doar in view of the fact that an additional brief was filed by us this morning which Mr. Doar got last night and in further view of the fact that a recent opinion that has been rendered by [fol. 209] the Court which one of these judges was on touching the question I wanted to get this out of the way. It seems to be the consensus of all that the motions involving a dismissal of the State based on the constitutionality of a part of 1971 with particular emphasis on that part which creates an agency of the State the motions involving that phase would be carried with the case.

By Judge Brown:

That's agreeable with Mr. Doar is it not?

By Mr. Doar:

Yes, it is.

By Mr. Wells:

And any additional memorandums might be furnished the court before the trial of this case and the matter can be then if the court desired even be argued at the conclusion of the case.

By Judge Brown:

That's agreeable with the court and Mr. Doar can respond to that by written memorandum, if desired.

By Mr. Wells:

Now if the court please, the order that I had set out was over the matters that we desired oral argument on. We felt that the other matters had been briefed to the extent that we couldn't add more to them by oral motion and those as we set out were actually the ones that we had prepared to present arguments on this morning and we've adopted [fol. 210] this order with the hopes that we could go from motion to motion on that with the court's permission. We've given a good bit of time in working that out and——

By Judge Brown:

We will adhere to your listing then and Mr. Doar, you will respond as they present one then you will respond to it. That's the plan.

By Mr. Wells:

Think possibly we can be more orderly and be helpful with the court and try to simplify it. If the court please, if I may do this before we proceed, there are a great many attorneys here and I would like for them to be identified as to who they represent. Representing Mr. Whittington, Clerk of Amite County, is Mr. T. F. Badon of Liberty, Mississippi and Mr. Joe D. Gordon of Liberty, Mississippi. I believe that they are here and they represent Mr. Whittington, the Clerk of Amite County. Representing Mrs. Easley, one of the defendants and clerk of Claiborne County is Mr. Joe Drake of Port Gibson, Mississippi, who is here on behalf of that defendant. Representing Mr. Smith, the Clerk of Coahoma County are Mr. Semmes Luckett and Mr. Leon Porter and Mr. Chester Curtis all of the Clarksdale bar and all from Clarksdale.

By Mr. Luckett:

Porter is not here.

[fol. 211] By Mr. Wells:

I believe Mr. Porter could not be here today. Representing Mrs. Lamb of LeFlore County is Mr. Aubrey Bell and Mr. Hardy Lott of Greenwood and the Greenwood bar. And representing Mr. Wiggins, the Clerk of Lowndes County is Mr. J. O. Sams, Jr., Mr. William Burgin and Mr. W. H. Jolly, all of Columbus. And representing Mr. Holmes of Pike County is Mr. B. D. Statham of Magnolia, who is here in behalf of those defendants and then Mr. Patterson, Attorney General, Mr. Guy Rogers, Mr. W. A. Allain, Mr. Peter Stockett, Mr. Dugas Shands and myself, Will S. Wells, Attorney General's office representing all of the defendants.

By Judge Brown:

Well, we should be well advised.

By Mr. Wells:

If the court please, the first motion that we would like to call up for oral argument is the motion to strike and the motion for more definite statement combined because they are alternative motions and that will be presented on behalf of the defendants by Mr. Guy M. Rogers, Assistant Attorney General. I have discussed with Mr. Rogers about it and I think I mentioned to one of the judges the motion for more definite statement usually is the long one and we will not take it unless he actually needs it, but we would like, on that particular motion, about forty-five minutes, if we might have it.

[fol. 212] By Judge Brown:

Let's start with this. Let's try to get within a half an hour. I think——

By Mr. Wells:

That's the only one that we would think might go over that but I think the court realizes that's a little bit detailed.

By Judge Brown:

We will hear from Mr. Rogers on that.

By Mr. Rogers:

Thank you for the court, please. May I proceed?

By Judge Brown:

Yes. Now you can proceed on the assumption that we've read the briefs. We may not understand them and we've tried to read these motions, too, so you don't have to do a lot of reading and as much as you can I hope that you can avoid any repetition.

By Mr. Rogers:

If the court please——

By Mr. Cox:

Is this motion the one that's captioned motion to strike alternative motion for more definite——

By Mr. Rogers:

That's correct, your honor. If the court please, since we have had that remark from the bench, I will say that as far as the motion to strike is concerned we will waive extensive oral argument on that phase of the motion for this [fol. 213] reason. This motion is addressed, of course, to the entire complaint which specifically asks the Court to strike some forty-five or fifty paragraphs.

By Judge Brown:

What's left if you strike all of that?

By Mr. Rogers:

Well, if the Court please, in all honesty there wouldn't be much left. We feel like the motion to strike goes to the heart of this lawsuit and if I may say this, although that due to the length of time that it takes and I am saying this from the standpoint of trying to conserve time on this motion but I do not wish to in any way minimize by waiver of this oral argument the value and merit that we put to the motion. We do feel like that it was briefed, I started to say adequate but there is probably no such thing as a lawyer adequately briefing a point, but we feel like there would be very little that we could add to the memorandum brief as submitted to Your Honors and for that reason in order to shorten these proceedings we will waive extensive argument on the motion to strike. I would like, if I may, to make just a few general statements about the motion.

By Judge Brown:

Well that's fine and perhaps some illustrations of one or two particular paragraphs will illustrate what you are talking about in tangible terms.

[fol. 214] ORAL ARGUMENT ON DEFENDANTS' MOTION TO STRIKE AND MOTION FOR MORE DEFINITE STATEMENT

By Mr. Rogers:

Yes sir. If the Court please, as the Court is well aware under the provisions of the rule and especially under provisions of Rule 8 of the Federal Rules of Civil Procedure a complaint should of course state a short and plain statement of the complaint and I think that if we examine the purpose and history of the rule of the Federal Civil Procedure that it would indicate that simplicity is what is desired. In fact, if I am not mistaken Judge Posaw or Mr. Barron made a statement that the rules were designed so a sixteen year old boy might plead. We feel that anytime a complaint contains vague or loose or ambiguous language or contains conclusionary statements of the pleadant or if the language of the allegations or the paragraphs are filled with redundant or immaterial, irrelevant or scandalous matter that under provisions of Rule 12f which is the provision for the motion to strike that the motion to strike is the appropriate remedy in order to reach this and to simplify and limit the pleadant. Now this complaint contains seventy paragraphs and we feel very strongly, if the Court please, about the length of this complaint. Of course we are not trying to tell the United States how to plead, but at the same time we will be called on to answer this complaint and when we answer this complaint with good pleading we should answer all material allegations. We certainly intend to, but at the same time we feel like that the complaint is [fol. 215] filled with impertinent and immaterial matter which have no bearing whatsoever on the lawsuit and, in addition, it is filled with instances of which or allegations of which this Court could take judicial notice. A question from this Court to me might well be—well, if the Court can take judicial notice of this how could you be harmed, how could you be hurt—for the answer to that would be is that we would be severely prejudiced even though the Court could take judicial notice of these things because we are required to answer. It's a burden that we should not have to shoulder when the allegations are immaterial and have nothing to do with the lawsuit.

By Judge Cox:

What section are you talking about now, Mr. Rogers?

By Mr. Rogers:

I will refer of course to paragraphs, if the Court please, whereas they set out certain statutes of the State of Mississippi, set them out in the complaint, not verbatim, but the substance of the statutes. Of course the Court could take judicial notice of the laws of the State of Mississippi and acts of its Legislature. Speaking of a package of legislation they keep referring to the House Bill from page I believe its paragraph, its obliterated on my copy here, let's see what the following paragraph is, probably 67.

By Judge Brown:

Page 24, 66 and so on. Page 24.

[fol. 216] By Mr. Rogers:

Yes sir, and they speak of the various sections of the Mississippi Code, they set them out where if they wanted to mention these sections which there is certainly nothing wrong with that the Court could take judicial notice of those statutes of the State of Mississippi. We also feel like——

By Judge Wisdom:

You wouldn't have any trouble answering those paragraphs would you?

By Mr. Rogers:

I don't say at all, Your Honor, that we would have any trouble.

By Judge Wisdom:

You could answer those if you feel that way you could answer it by saying that we answer that paragraph by saying that we are not required under the law to answer the paragraph.

By Mr. Rogers:

Of course, Your Honor, I could say that the Court would take judicial notice.

By Judge Wisdom:

That's right and the Court would take judicial notice.

By Mr. Rogers:

Yes sir.

By Judge Wisdom:

So it doesn't put you to much of a problem.

[fol. 217] By Mr. Rogers:

I agree with Your Honor.

By Judge Wisdom:

It becomes hard for a Mississippi lawyer to argue that a complaint is really too detailed and that's my observation on the Court of Appeals has been that you don't like the Bar here doesn't really like this Federal notice speaking very well but this time you do.

By Mr. Rogers:

If the Court please, some of us like it very much. I am not speaking for the Bar of the State of Mississippi and I am trying to be very general about this without getting into these paragraphs as such. They speak some of the paragraphs, of course the complaint is alleging discrimination. Some of the paragraphs make no allegations whatsoever on discrimination except in very general and vague terms. They speak of some of the paragraphs speak of white political supremacy which, of course, has nothing in the world to do with this lawsuit about maintaining white political supremacy. They speak of the actions, if the Court please, of the white citizens council of Mississippi. Of course, as the Court knows, the white citizens council of the State of Mississippi are not parties to this lawsuit and

what the white citizens council did or failed to do or tried to do of course has no bearing on this lawsuit.

[fol. 218] By Judge Wisdom:

Well, now we can't tell at this state, but it would seem to me to be argueable that under one of the claims attacking the statutes, the amendments which provide for the good moral character requirements and the right of private citizens to file a challenge to the good moral character of the voter registrar that it might be relevant to know what the atmosphere is in which these significant attacks by nongovernmental persons will be. It seems to me this is something that no court could say yet would or would not be relevant. We have to wait and see.

By Mr. Rogers:

If the Court please, I cannot see how that it would be very relevant, if at all, since they are no way connected the organization they are not party defendants.

By Judge Wisdom:

Does the historical setting of the statute have bearing on the construction of it?

By Mr. Rogers:

I didn t understand.

By Judge Wisdom:

Does the historical setting in which an act is passed have a proper bearing on the construction of it or constitutionality of it?

[fol. 219] By Mr. Rogers:

Of course the Government contends that it does the legislative setting and I think they cite for that authority Davis v. Snell. Of course——

By Judge Wisdom:

I could cite you several others. I could cite you the Grossier case in which the Supreme Court in effect took notice of the historical setting in Louisiana when Governor Long attempted to penalize the newspapers by tax that was routine tax on its face.

By Mr. Rogers:

If the Court please, I am not familiar with that case but I certainly do not think that the legislative setting that that would be a controlling factor.

By Judge Wisdom:

Of course I am not suggesting that it is controlling and I think whatever proof they bring in would have to have a direct bearing on it but it seems to me it might be material and relevant to an understanding of the statute.

By Mr. Rogers:

What I am trying to do, if the Court please, is just to very generally bring some of these points that we were concerned about before the Court and for the Court's attention and as the Court has said they have read our briefs in support of this and that we would like particular [fol. 220] emphasis made on these points that they have raised in the complaint. We feel like they have no place, no proper place in this lawsuit. I could go on and name others about alleged that the registrars of the State of Mississippi are white people.

By Judge Wisdom:

I think that illustrates the point you are trying to make. I think the more serious thing is the motion to strike, I mean the motion for more definite statement. It seems to me that you are just as inconsistent as you can possibly be now because what you are asking for I will put it what's in my mind what you are asking for is the very kind of detail that you have just complained that they put in.

By Mr. Rogers:

If the Court please, we don't feel like that they have put in detail. They have a lot of language. They have a lot of loose unsupported allegations but when I get to the motion for a more definite statement I think that I can show then that what we are asking for is for detail.

By Judge Brown:

Suppose you proceed with that.

By Mr. Rogers:

All right sir. If the Court please, I could advance I think possibly maybe one with not quite as much merit as the other in support of the motion for more definite statement but I think that the main point to bring before this [fol. 221] court is that we feel like since these defendants have been accused and charged with discriminatory acts and practices that we have the right to have this specified to us. We say that in this case that the plaintiffs are charging the defendants with fraud and if it is fraud then of course the pleadings must conform to Rule 9b of the Federal Rules of Civil Procedure, and if I may say this, this Court has had this question presented to it and on several occasions and on two to my knowledge in similar actions brought under 1971 this Court has found that the dravanem of the suit is fraud and that since it is fraud that the complaint that the claim should be plead with particularity and not in general terms, not in vague terms, not in ambiguous terms, but it should be plead with particularity and it should be plead with specificity as required under 9b since its fraud. We of course are saying that what the plaintiffs here are charging is fraud. In fact we say that they are charging indirectly and the complaint is vague and ambiguous——

By Judge Brown:

How do you make fraud out of a charge that officials of the State of Mississippi and the registration of negro voters are discriminating against them by applying tests that they do not apply and apply them in manners they

do not apply them to white registrants or subject them to tests or requirements they do not subject white registrants [fol. 222] to. How do you make fraud out of that? Seems to me if its so its a flagrant violation of the law and it isn't fraud.

By Judge Cox:

I would regard that as a palpable fraud if a man is sworn to impartial discharge of his duty and should have one standard for whites and one standard for colored if that's not fraud I don't know the definition of it.

By Mr. Rogers:

I appreciate the Court answering it for me. I will bolster with some authority here about fraud and I will cite to this Court the case of the United States v. McElvee, that's a case decided by Judge Skelly Wright who has had vast experience in the field of civil rights and in some of the cases as this under 1971a and Judge Skelly Wright who that case which was decided in October 7, 1950, United States District Court, Eastern District of Louisiana, in 177 Fed Sup——

By Judge Wisdom:

Is that in your brief, is that referred to in your brief?

By Mr. Rogers:

No sir, it is not.

By Judge Wisdom:

What is the case?

By Mr. Rogers:

Its United States v. McElvee.

[fol. 223] By Judge Wisdom:

Oh yes, that's under the name of Thomas too I believe.

By Judge Brown:

It was affirmed by the Supreme Court under a different name wasn't it?

By Mr. Rogers:

Yes sir. I just wanted to say to quote from one paragraph from the opinion of Judge McElveen and that is Judge McElveen states in his opinion the United States in this action charges that this profession of high purpose was a fraud designed to deny negro citizens of a right to vote and that is what I cited that case for that portion of the opinion.

By Judge Brown:

You have the citation again, Judge Cox is putting a note down here.

By Mr. Rogers:

Its 177 Federal Supplement 355 United States of America v. Diaz D. McElvain.

By Judge Wisdom:

You have the U. S. citation too, I guess.

By Mr. Rogers:

I do not. I have the supplement here on it. I could furnish that to the Court.

[fol. 224] By Judge Wisdom:

Well, that's all right, its easy enough to get.

By Mr. Rogers:

Going on with the our theory which we think is accurate about these civil rights cases constituting fraud we say that the cases hold that they are fraud cases, not only the McElvain case which was a case from the District Court but the hallmark case of McGuire v. Todd from the Fifth United States Court of Appeals, which is cited in 198 Fed.

2d 60 which was brought under not under 1971, I will not say that, but it was brought under the civil rights statutes 1981, 1983 and I believe 1985.

By Judge Brown:

That might have been affected a litle bit by Connelly and Gibbs and I personally think it has been but its a tenacious precedent.

By Mr. Rogers:

Yes sir, I would like to later if I may mention Connelly v. Gibson.

By Judge Wisdom:

Is there a reference to it in your brief?

By Judge Brown:

McGuire against Todd, I think he has.

By Mr. Rogers:

Yes sir, pardon me, Your Honor. Its on page 24.

[fol. 225] By Judge Cox:

What is that 198 Fed 2d you just gave?

By Mr. Rogers:

198 Fed 2d 60. May I continue, Your Honor?

By Judge Brown:

Yes sir.

By Mr. Rogers:

Of course in that complaint and the complaint itself is set out as I recall in the McGuire v. Todd case they use certain loose language and vague and ambiguous language where they charge malicious actions and conspiratorial actions and thing like that and said they were being deprived of——

By Judge Wisdom:

Is that a criminal case or civil case for conspiracy for damages for conspiracy?

By Mr. Rogers:

Yes sir, if I remember the facts involved where they made an entry some fire commissioners made an entry into a home maybe for fire inspection purposes or something like that and the lady barred the door and denied them entry or something like that and I think she was promptly hauled into——

By Judge Wisdom:

They were making complaint about the manner in which some state court litigation had been handled.

[fol. 226] By Mr. Rogers:

Yes sir. I think she was hauled into Court on some sort of complaint but the point I am trying to make is that this went on appeal to the Fifth Circuit on the sufficiency of the complaint to withstand the motion for failure to state a claim and of course we say if the complaint could not withstand that motion the motion to dismiss for failure to state a claim that it would certainly be susceptible to a motion for more definite statement and I would like to quote, if I may, just briefly from the opinion of Judge Hutcheson. It is sufficient for us in this case to say as other courts have done we disregard as mere conclusions the loose and general the facts, the unsupported characterizations of the complained of acts of the defendant as malicious, conspiratorial and done for the purpose of depriving plaintiff of their constitutional rights, that the things defendants are alleged to have done as distinguished from the conclusions of the pleaders with respect to them do not constitute a defamation of the civil rights of the plaintiff and do not give rise to the cause of action claimed and a judgment dismissing the complaint shall be affirmed.

By Judge Wisdom:

Does the distinction between the types of action make a difference here the fact that one was a claim for damages based on conspiracy and the other and this case would [fol. 227] that make a difference in the requirements of the pleader you think?

By Mr. Rogers:

I wouldn't think so at all, Your Honor, because what we are saying here in our motion for a more definite statement and I will refer to that, actually we did not challenge many *many* of the paragraphs, I think I have a number here as to the ones that we actually did ask to made more definite and out of this seventy paragraphs we ask for paragraphs 21, 35, 41, 52 and 69, five paragraphs out of seventy, but I do not to answer your question, if the Court please, I don't think it will make any difference because what we are trying to do and what we are trying to get this Honorable Court to order is for the Government simply to slim this thing down and get down to the meat in the coconut and give us this information and don't put us to the burden of and it would be quite a burden to answer these allegations without some real facts. In other words we don't feel like——

By Judge Wisdom:

Can you tell us specifically what you think they should allege?

By Mr. Rogers:

Yes, Your Honor. In paragraph 21, if the Court please, and as to subsection A the plaintiff alleges they use the word they said was maintained white political supremacy [fol. 228] was maintained and promoted by the following methods among others, they are throwing in the words among others, negroes were not allowed to register to vote. All right in our motion to make more definite this statement of this paragraph we said its broad and loose and general and we say how and where, they just say they were not allowed to register to vote.

By Judge Wisdom:

Of course that's one of those historical statutes or paragraphs because its limited to 1952 and there is no contention that the particular registrars involved here or even registrars generally since that time have followed those methods so far as that paragraph is concerned.

By Mr. Rogers:

Yes sir, I agree with you there, but trying to pick up the entire theory of their complaint I think that this certainly they probably feel like its a very integral part of the overall picture when they say speak of white political supremacy and that it was maintained and promoted.

By Judge Wisdom:

You know I was merely suggesting that it doesn't bear on the question of fraud in so far as these individuals are concerned.

By Judge Brown:

The defendants, registrar defendents.

[fol. 229] By Judge Wisdom:

The individual defendants wouldn't have to worry about that paragraph so far as fraud is concerned. Now that may not be true of these other paragraphs.

By Mr. Rogers:

That's what I was looking at paragraphs B and C, if the Court please.

By Judge Brown:

I understand that some of the paragraphs in effect charge that there has been discrimination by reason for race and your motion for more definite statement you want to know the names of the person discriminated against and by whom and the circumstances.

By Mr. Rogers:

Yes sir.

By Judge Brown:

Well, it seems to me and I am saying this so you can ——— my mind if I am in error, Judge Wisdom and I have a little familiarity, we sat for a week in Hattiesburg and listened to a lot of testimony about registration practices that inevitably that's going to take a lot of proof in the form of registration applications, the actions of the registrar, and I am unable to see how you could possibly allege that with the details you ask in a complaint. If you did you are going to have a thing this thick and instead of [fol. 230] simplifying its going to make it worse. This is the thing for discovery.

By Mr. Rogers:

Pardon me, Your Honor, but may I say this in all due deference I think that it could be furnished to us and I think it would be very helpful, I think it could be alleged beeause in the motions that we have motions for more definite statement which we have been granted in similar causes not only in this Court but in the Northern District of Mississippi and I think I annexed these orders as Exhibits A and B to my memorandum brief and it tells the Government what they should do, what they should furnish the plaintiff such as giving the names of the persons, the dates and the persons present, the details of the instances relied upon by the plaintiff and I am reading from the Court's order now to show that the registrar discriminated against the negroes by refusing to register. I mean in all seriousness I think that this information could be put in a complaint because it can be put in answers to interrogatories, there is no question about that.

By Judge Brown:

Now here is a difficulty. One of the charges and I use that in a broad sense is that by reason of these practices, well let me back up. The answer we heard before and I am sure its certainly an answer that can be advanced in good

faith is well so what about these statistics, there may be 10,000 whites and 100 negroes, but only 100 negroes have [fol. 231] applied—if they wanted to register why didn't they apply. Well in response to that the Government makes this contention as I understand they have been deterred from doing it because they have seen what's happened to all their friends. Now how are you going to prove that except by that's a thing that's going to be established by a lot of individual instances it would seem to me that either would or would not support the inference that this is the explanation for not more of the negroes applying and I don't know how you are ever going to put that in a complaint any more definite than they have done.

By Mr. Rogers:

Well, may I make a suggestion in answer your question, Your Honor?

By Judge Brown:

Yes.

By Mr. Rogers:

Let's just take this for an instance. They are charging that these clerks have discriminated against negro citizens. Now that they were not allowed to register to vote and all we ask is where did this take place. All right we have and to make a personal reference we have Mr. T. E. Wiggins, one of the Clerks here in the Court Room from Lowndes County, Clerk and Registrar, did that take place in the office of Mr. Wiggins or was it out in one of his precincts where he is required under law to go I believe every [fol. 232] four years to register voters, did it take place out there, who was there, Joe Jones was there, John Brown was there, were they otherwise qualified, were they otherwise qualified to vote, make those statements to us, we have a person here who was otherwise qualified to vote, he went into Mr. Wiggins' office, he was not given opportunity to register to vote and call him by name. Certainly the Government has these names of these people. I assume that they just didn't file this complaint just on hearsay and conjecture, I assume they had some basis to file the lawsuit.

I just can't see that it would be such a burden on them to make more definite five paragraphs out of a seventy paragraph complaint and I think they could do it, they do it all the time, if the Court please, in answer to our interrogatories and they give with great specificity, great particularity and its a big help to us and I think we are entitled to it.

By Judge Brown:

Certainly nothing intimated here is intended to cut off discovery on the part of either party because unless we rule with you on one of the motions it looks to me like it might be a pretty big factual case.

By Mr. Rogers:

I understand that, Your Honor, and I wasn't trying to indicate that you were trying to cut us off but I just wanted to make an analogy with an answer to an interrogatory I believe some of the material that they cover in answer to [fol. 233] interrogatories would be satisfactory and would give us the information we need, if they had plead it in their complaint I don't think it would have been a burden on them, that's the point I am trying to make, Your Honor.

By Judge Brown:

Now it seems to me, Mr. Rogers, isn't this pretty typical of your motion for more definite statement the point that you have made now so far?

By Mr. Rogers:

Yes sir, I think——

By Judge Brown:

I believe we have got a pretty good picture if you want to kind of wind it up in a couple of minutes I think we have got a pretty good understanding of your position and we will simply have to rule on it.

By Mr. Rogers:

All right sir. I will say this the only thing that we are asking for, this is not a dilatory tactic if the Court please, if we just wanted to be dilatory and drag this thing out as far as this complaint and not being in good faith with the Court we could have asked for seventy statements to be more definite. Its not a dilatory tactic and we feel like we are entitled to it in order to frame the responsive pleadings, that's it in the nut shell so to speak. Now if the Court please, I probably have gone over my time but I did want to say——

[fol. 234] By Judge Brown:

You haven't. You have not gone over your time.

By Mr. Rogers:

I did want to make a few more remarks before the government answers me on this and I had intended to take up these paragraphs but I see that that will be very time consuming but I would like to say and I am not trying to actually anticipate the Government's argument in opposition to this motion for a more definite statement but they cite and the Court mentioned the Connelly v. Gibson case and in checking that case over they say, speaking of the Government's opposition, the request by the defendants is a clear attempt to obtain discovery which is not the proper subject of a motion for more definite statement which I certainly admit is true but in checking the Connelly case the Government's opposition brief I find this language, it did say what they said it said but it went further speaking of notice pleading—such simplified "notice pleading is made possible" and when we speak of notice pleading we are speaking of Rule 8 of the Federal Rules, is made possible by the liberal opportunity for discovery and the other pre-trial procedures established by the rules to disclose more precisely the basis of both claim and defense and to define more narrowly the disputed facts and issues and this is the thing that's really significant to me in ———although they cite it in opposition to our motion [fol. 235] it refers to footnote 9 and I am reading from page 85 in 2d Law Edition 2d 80 and it refers to footnote 9

when they speak of notice pleading and the fact that you do have these pre-trial procedures the first thing that they have in footnote 9 such as——

By Judge Wisdom:

What case is this?

By Mr. Rogers:

This is Connelly v. Gibson, Your Honor. I apologize for not having given the citation.

By Judge Brown:

You needn't give the citation unless its not in your brief so far as I am concerned in any of these cases.

By Mr. Rogers:

Its not in ours, Your Honor, its in the Government's brief, however, but they say see Rule 12e motion for a more definite statement, rule 12f motion to strike portion of the pleading, rule 12c and so on. In other words Connelly doesn't say to me what the Government cites Connelly for. They cite it that we are just trying the discovery route or attempting to through a motion for more definite statement. We say that's not what Connelly said. Certainly they speak of notice pleading and we understand what notice pleading is but they go further. They say that is the reason that you have notice pleading is because you have these procedural devices such as a motion for a more definite statement. If the Court will indulge me one moment please sir. [fol. 236] If the Court please, I would just call this to the Court's attention and it is in my brief following the McGuire v. Todd case which we certainly think is the hallmark case as far as rule 9b vague ambiguous pleadings, fraud and so forth, the Fifth Circuit, I am going to just mention the Fifth Circuit Court of Appeals has also highlighted these cases in the Tucker v. National Linen Service Corporation citing McGuire v. Todd, Morgan v. Sylvester, that's from the Southern District of New York, citing McGuire v. Todd and so I will agree with the Court its been quite a precedent; Crawford v. Liteg from Michi-

gan, a 1959 case citing McGuire v. Todd and so on and the Moffett and Commerce Trust case, its a district court case of Missouri, and for these reasons, if the Court please, we most respectfully urge the Court to cause the Government to furnish us the information that we ask in our motion for a more definite statement in order for us to frame a more responsive pleading, we think it will be to the Court's advantage as far as time wise when the trial finally comes around on its merits to get down as I again repeat down to the meat in the coconut.

By Judge Brown:

I don't see how its going to help one bit. I have been through one of these things now part way through and in the final analysis it isn't anything that the lawyers say here, they have said as much as they can say I believe that [fol. 237] they are discriminating on account of race, its a serious question whether that's taking place to both sides and its only going to be decided except in those flagrant cases by hearing a good deal of evidence and somebody has to draw the inference based on truth, on non-truth and on conduct and everything else.

By Judge Wisdom:

Now I will add to that that there will be that category of cases and then there will be a category of cases where it doesn't matter the names of the individuals don't matter at all, its just a question of the language of the statute and the application generally.

By Mr. Rogers:

I can see how that could well be possible, Your Honor, but we are not if you will pardon the expression we are not just hung up on the idea of the name or where it took place or who was present. We don't feel like one of them is any more important than the other. We are just trying to get the pleadings so that we can frame a responsive answer and we feel like that that would possibly shorten the time that it would take to try the case on the merits if it was sort of slimmed down some so to speak.

By Judge Cox:

The statute doesn't say anything about time and place and persons present and speak with particularity. The [fol. 238] statute mentions circumstances. Do you think that this pleading doesn't state sufficient circumstances with sufficient particularity to let you know in a general way at least what he is talking about.

By Mr. Rogers:

I don't, Your Honor. I honestly do not; in fact I think that there is no way in the world under this complaint for these clerks, these six clerks that are joined as defendants, to know what they are really charged with and of course the Court is well aware that they are charged with a very serious offense and in all honesty to the Court I don't think they have any way of knowing. I will not burden the Court further. I appreciate the time you have given me and I again respectfully urge your consideration.

By Judge Brown:

Thank you, Mr. Rogers. I think we have your case very well on that. Now could we hear from Mr. Doar or who will respond for the Government?

By Mr. Doar:

If the Court please,——

By Mr. Rogers:

Mr. Doar, may I say something?

By Mr. Doar:

Sure.

[fol. 239] By Mr. Rogers:

If the Court please, before Mr. Doar begins his argument I would like to ask to be excused for about five minutes to make a phone call home, my wife is ill.

By Judge Brown:

You certainly may. Would it be all right for Mr. Doar to go on?

By Mr. Rogers:

Absolutely.

By Mr. Doar:

Your Honors, in the——

By Judge Brown:

It isn't necessary for you to be tit for tat and they had the laboring oar so they took forty minutes but I don't think you are going to have to necessarily match that minute by minute.

By Mr. Doar:

In all of the 1971a cases that have been filed in Mississippi and there has been six or seven of them the courts have followed Judge Cox's ruling in the first 1971-a case charging discrimination that this was an act based on fraud and that the plaintiff would have to allege with particularity sufficient circumstances so that the defendant would know, what was the basis of the charge. Now as I have argued [fol. 240] several of these motions to Judge Cox and several times as I recall the position of the Court was that when you had a very short pleading without any specificity that it was not fair to the defendants to require them to come into court and do anything until there was sufficiently set forth sufficient facts as contrasted to conclusions were set forth to know as the Court said to me one time whether or not the plaintiff could climb the hill to establish the burden of proof that was required in this type of a case.

By Judge Cox:

I didn't say set forth facts though, I said ultimate facts.

By Mr. Doar:

That's right, excuse me, you said set forth ultimate facts and I say that in this case, Your Honors, that we have set forth the ultimate facts with respect to how the statutes are being used to discriminate against negro citizens in Mississippi.

By Judge Brown:

Are you saying by that that that accounts for a good deal of the detail to which they object in their motion to strike?

By Mr. Doar:

That's right.

[fol. 241] By Judge Wisdom:

Tell me this. Isn't it part of the theory of a case that the individual is not so important as it is because the statute applies to all of them and its not a case of discriminating against particular individuals?

By Mr. Doar:

That is true, Your Honor. Our theory is with respect to the read and interpret part of this case that the statute is unconstitutional because of the legislative purpose of that statute was to discriminate against negroes on the basis of race. Relevant proof on that is allegedly a history itself. That's set forth in great detail. Relative proof on that is the great discretion that is vested in the registrar to determine whether or not the particular applicant would pass or fail.

By Judge Wisdom:

As to that the individual is not important, doesn't matter, the names of the individuals are not important.

By Mr. Doar:

That is true. It has no material at all and how the statute vests this discretion is set forth in considerable detail with respect to this statute in one of the paragraphs, I don't have

it right before me, but the various things that it permits a [fol. 242] registrar to do in administering the test is itemized in detail. Now finally we claim that a part of this case is how the statute is actually being used and in that respect we think the ultimate facts is that it is being used to discriminate A in the selection of the statute; B in the assistance given to white people and not to negroes; C in the manner in which the statute is being graded or the answer is being graded and fourth in determining whether or not a particular applicant will be required to take the test at all.

By Judge Cox:

Are you trying a registration case here before a three-judge court?

By Mr. Doar:

No, we are not because we are not trying anything except the use of a particular statute. We are not trying other forms of discrimination, Your Honor, such as where they take negroes one at a time and white people ten at a time.

By Judge Cox:

That's just one omission?

By Mr. Doar:

That one omission. We are not trying a case where the registrars just says no, you citizens go home and wait a while, we are not trying that, proof with respect to that would not be relevant in this case.

By Judge Brown:

I think Judge Cox has put his finger on one of the [fol. 243] most crucial things for us to discuss to go into today and I am not asking you to elaborate further at this moment. All counsel what is the difference between this lawsuit with a three-judge court and the run of the mill type of suit. I think it comes up in one of these other motions.

By Mr. Doar:

That does come up in a later motion but I don't think that its relevant on the question for a motion for a more definite statement. Now its true that the defendants have cited the MsGuire case and on the other hand we have cited the Connelly case and we also have cited the case or wish to call the Court's attention of the case of Mitchell v. Easy Way Towers, Inc., which was decided in 1959 by the Court of Appeals, it's found in 269 Fed 2d 126, the name is Mitchell v. Easy Way Towers, Inc. Now this was a suit, Your Honor, by the Secretary of Labor against the defendant for failure to pay minimum statutory wage and for overtime hours and there was a very definite motion for more definite statement and the Court said that the defendants weren't entitled to that and the reason they weren't entitled there was nothing to indicate why the defendant from their knowledge of their own records would be unable to either admit or deny the allegations concerning the violations. Now if that case isn't relevant to a voter a case challenging the constitutionality of the statute [fol. 244] where whether or not the statute has been used to discriminate if that is a relevant question depends so much upon their own records and their own conduct I say that there is nothing that would prevent these particular defendants from either answering we deny the charges or we admit them in part and deny the rest.

By Judge Cox:

You are complaining that these citizens are so much more numerous than would be the employees of course on practical basis of your suggestion.

By Mr. Doar:

I don't understand what you said, Your Honor.

By Judge Cox:

I said he is contending that the citizens of a county are so much more numerous than are his employees in a particular business that he has difficulty in knowing in what instance and with whom he is alleged to have practiced this fraud as I see it.

By Mr. Doar:

Well, Your Honor, it doesn't, it's somewhat of a job to take these application forms and put them in a chronological order and put them together and go through and look and see whether white people are getting easy sections and negroes are getting hard sections but its not impossible even in a county where there is 15 or 20,000 people regis-
[fol. 245] tered and actually the number of application forms over a five or six year period are not so extensive that this can't be done and who can do it better than the person who graded the application at the time. He knows. Many of these instances we don't have the records, in three of these counties we haven't got the records yet. In every one of these cases after we get the records our facts are displayed in great deal more detail than before.

By Judge Cox:

You don't have a particular record but to my knowledge I think I made about eight registrars turn over things to you, I think I have tried about three or four additional cases, so you have eleven or twelve to my knowledge where you know just about as much as anybody I know of about what's going on in the Southern District.

By Mr. Doar:

Your Honor, that's absolutely right but the point all I say is that the State of Mississippi is divided into two districts. One district there are certain registrars that haven't given us the records.

By Judge Cox:

Well, I think I have got enough to do in the Southern District without taking over the Northern.

By Mr. Doar:

Well, that's all I care to say on this point, Your
[fol. 246] Honor.

By Judge Cox:

I don't mean to cut you off.

By Mr. Doar:

I understand, but it is true that we have got the records in the Southern District. Where we have got the records we filed detailed and specific answers to interrogatories in which we set forth the full contents of our case sometimes in fifty or sixty pages in answers to interrogatories as to all particulars. I claim they would be entitled, I agree they would be entitled to get these answers.

By Judge Wisdom:

Let me understand. You say when interrogatories are filed in this case asking for the detailed information which they say should be included in the complaint that you will give that information. Is that correct?

By Mr. Doar:

We will and we have. We have in the cases in your Court. I think, Your Honor, this one argument about whether or not we have to furnish the full statements of every person who has been interviewed and the other day the Court ruled that this was not available to the defendants, this particular matter was not available to the defendants under Rule 33, but the names and addresses of white persons——

[fol. 247] By Judge Wisdom:

In other words you are addressing the interrogatory in support of allegation 45 to state the names and addresses as known and the witnesses you propose to produce in support be given.

By Mr. Doar:

We have given that. We have also given state the names and addresses of all white persons who received preferential treatment and indicate how they got preferential treatment we have given that and state the names and addresses of negro citizens who were discriminated against and how that was done we have given that. State the names of all persons that have interviewed people we

have given that. It's just a matter here of whether or not this information must be required by way of a more definite statement.

By Judge Brown:

I think we have that part of the case. We have so many other motions I think we better go on to the next one.

By Mr. Wells:

If the Court please, before we proceed with the next motion I would just make one statement to clarify the John Brown that Mr. Rogers referred to I am sure is from Columbus, Mississippi and not Houston, Texas.

[fol. 248] By Judge Brown:

You are talking about credible witnesses.

By Mr. Rogers:

I assure the Court it wasn't personal.

ORAL ARGUMENTS ON DEFENDANTS' MOTION TO STAY AND DOCTRINE OF ABSTENTION

By Mr. Wells:

Next, if the Court please, I would like to call up motion to stay and doctrine of abstention and will be handled by Mr. Joe Drake and Mr. Drake tells me he will not need more than fifteen minutes.

By Judge Brown:

I think we ought to be able to handle it in that at least. I think we are the court is pretty familiar I think with the case law on this and what you have to do is to demonstrate to us why where there is a massive attack on the federal constitutionality of the Mississippi statute why we should leave that to Mississippi courts.

By Mr. Drake:

If the Court please, as the Court says you are familiar with the case law on the matter. We——

By Judge Brown:

Excuse me, Mr. Drake. Is this called Number 4 motion of defendants to stay doctrine of abstention?

By Mr. Drake:

Yes sir. If the Court please we had not filed a written brief on this matter setting out the court authorities, [fol. 249] there was a little confusion in it. If the Court would like I would be glad to give you a list of the authorities before you dismiss. In this doctrine of abstention as the Court is aware it arose in its modern form in the so called Pullman case in 1941 which was a case from Texas having to do with a regulation of the Railroad Commission of Texas which was an alleged discrimination against the negro pullman porters and basically the rule as announced was that the doctrine of abstention is appropriate to our Federal system whereby the Federal Courts exercising a wise discretion restrain their authority because scrupulous regard for rightful independence of state governments and for the smooth working of the federal judiciary. This use of federal powers is a contribution of federal courts in furthering the harmonious relations between the state and the federal authority without the need of vigorous congressional restrictions on these powers. That as followed out by a number of cases has been instated to require, some cases say require, some cases don't go quite that far, that a federal court before considering the constitutionality of a state law and by state law I mean either a legislative enactment or a constitutional provision where the law is subject to interpretation and where the interpretation thereof might affect the validity under the Federal Constitution and that the courts will refrain from passing on the [fol. 250] constitutionality or unconstitutionality until such time as the state courts have interpreted these possible questionable matters so that if these matters are subject to interpretation then the state interpretation of it will control before deciding whether or not the state enactments, whether they be laws or constitutional provisions are unconstitutional. The complaint in this case has made general charges that these laws of the State which they attack are subject in effect are subject to interpretation *uh* and looking at these provisions we can see where there

can be room for interpretation. Section 244 of the Mississippi Constitution as originally enacted required that the applicant for registration read any section of the constitution or be able to understand the same when read to him or give a reasonable interpretation thereof. Now this section as enacted in the Constitution of 1890 has been upheld by the Supreme Court in an earlier section but apparently this complaint attacks it again, but we come up to the question what does the constitution mean by read or what does it mean by understand. To my knowledge and the knowledge of the other attorneys for the defendants in this case there has been no applicant for registration who have been denied registration because of lack of ability to read or understand or interpret. None have followed out their right of appeal to——

By Judge Brown:

Now let me get you straight. Are you saying here that [fol. 251] the individual voters have not exhausted their so called Mississippi administrative rights?

By Mr. Drake:

Administrative rights.

By Judge Brown:

Well now we are walking right into just a voter discrimination case aren't we, it is no business of a three-judge court and when we come to that maybe you have an abstention point but I don't see where you have an abstention on a suit brought by the United States pursuant to a statute that says the district courts of the United States have jurisdiction, that the sovereign has to go to the state court system to test the federal constitutionality of a statute.

By Mr. Drake:

Now the question what my point is this, however, that to be able to say whether or not these laws are unconstitutional because on their face they do not set up standards that in effect is what this complaint is.

By Judge Brown:

Well now specifically what is it that you should say ordinarily when you abstain you enter an order, we abstain until the parties who are directed hereby to proceed forthwith file in an appropriate Mississippi Court an action which will determine the following questions. Now what questions do you say that the Mississippi Court ought to pass on?

[fol. 252] By Mr. Drake:

Well, the one question that was raised particularly in this complaint is good moral character. What is meant by good moral character? That should be determined by the state courts. Is the conviction for a traffic violation in a court does that make a man of not good moral character and that's one example. Another one is we here in Mississippi are as far as liquor is concerned a dry state. The fact that a man takes a drink does that make him of not good moral character, that's a violation of the Mississippi law, but does that make him of not good moral character so that anyone can challenge him whether the man challenging him be white, colored or anybody. Frankly, if that's the case anybody could challenge me if I register again. The question has not been settled and they have raised the question particularly of the constitutionality of this good moral character business because they say it is indefinite. That question, I believe, has——

By Judge Wisdom:

Is there any Mississippi decisions on good moral character as a requirement of registration.

By Mr. Drake:

Your Honor, as far as I know there have been no decisions on that case. As far as I know there have been no refusals to register——

[fol. 253] By Judge Brown:

Well now this makes, let's see, in effect you are saying this are you not that there is a likelihood that the Supreme

Court of Mississippi will do one or two things. It will either specify what constitutes a good moral character or the absence of it in which case the Federal constitutional question is never reached or it will do as this court is asked to do strike it down because it is so broad and indefinable that rights too valuable are impaired and there again the Federal Court doesn't reach the question. That's about what you are saying.

By Mr. Drake:

That in essence, Your Honor, is what I have in mind that these matters like this that if the State Constitution the State Supreme Court says they are meaningless should be stricken down that does not then require the Federal Courts to pass on it.

By Judge Brown:

Now do you have in Mississippi a declaratory judgment system?

By Mr. Drake:

No sir, we do not.

By Judge Brown:

Then what kind of a lawsuit would this be. Would the United States Government have standing in the Mississippi [fol. 254] Court? Where do they go to chancery or to the law side or what?

By Mr. Drake:

Your Honor, very frankly that has bothered me somewhat myself. In the lack of a provision for a declaratory judgment I frankly don't know any procedure whereby the government itself could come into the State Court for an interpretation. Any discriminated against registrant has that right of appeal and if that is a matter that has caused the discrimination by preventing registration those matters should have been appealed through the administrative procedure and through a hearing in the courts.

By Judge Brown:

Well, one of the contentions of the Government is that under these recent amendments the process is so costly or apt to be that a negro without abundant resources cannot incur the risk of legal costs which are a part of the administrative hearing as I understand these 60 or 62 amendments tax costs as a chancery case.

By Mr. Drake:

Your Honor, of course we realize that it might be expensive. There is no denying that, but what has worried us is should the normal judicial procedure for determining these things be shall we say in effect if I may say so without offense to the Court short circuited where the proce-
[fol. 255] dure set up would give the proper court the proper proceeding the authority to pass on these questions which might be raised. Now, if the Court please, on that I——

By Judge Brown:

You have got even more protection for the advancement of Mississippi's point of view through the three-judge Federal Court route than you have through the State because you have an automatic right of appeal to the United States Supreme Court from the decision of this Court. The appeal from the Court of Mississippi is discretionary and maybe Congress at least thought that that was the way that Federal constitutionality of State statutes should be determined and set up a three-judge system.

By Mr. Drake:

Yes, Your Honor, we are aware of that. As I have said and I am reiterating now I think that I have about depleted our ideas on the matter unless the Court has other questions, but our idea is that these matters that are possibly subject to interpretation should be interpreted first by the State Supreme Court. If the Court please, with that I will conclude my argument. I feel that these matters should be interpreted first by the State Court.

By Judge Brown:

Thank you, Mr. Drake.

[fol. 256] By Mr. Doar:

Your Honor, all the Government wishes to say in response to this motion is that this is the normal judicial way to test the constitutionality of state statutes which the Government contends are invalid under the 15th and 14th Amendment. This is what happened in the case of Darby v. Daniels and this is what happened in the case of Davis v. Snell and we respectfully say to the Court that in a matter as important as free and free voting rights under the 15th Amendment that it isn't proper to consider the federal-state relationship in the same way that you might consider a complicated tax system. This challenge that the Government has made is that the voting statutes in Mississippi are all bad and contrary to the 15th Amendment and under the Civil Rights Act of 1957 and under the procedures that the Federal Courts have traditionally followed they hear these cases and decide them on the merits and that's what they have to do.

By Judge Cox:

Mr. Doar, are you complaining of the purpose of these iniquitous statutes or the effect of these statutes?

By Mr. Doar:

We are complaining both the purpose and the effect is to discriminate against negroes on the basis of race. We think that the effect of the statutes how they are being used is relevant on the question of purpose. We think that [fol. 257] you don't have, we think that the purpose of the statute does not have to say on its face white persons shall register, negroes shall not to be a device to discriminate and be unconstitutional to have a three-judge court declare the statute unconstitutional.

ORAL ARGUMENT ON DEFENDANTS' MOTION TO DISMISS THE COMPLAINT FOR LACK OF JURISDICTION OF SUBJECT MATTER.

By Judge Brown:

Thank you. The next motion is Number 3 Motion to Dismiss the Complaint for Lack of Jurisdiction of Subject Matter.

By Mr. Wells:

If the Court please, as you will notice in the memorandum Mr. Stockett will confine his argument in this matter to that portion of the motion dealing with the capacity of the plaintiff to bring a suit of this kind. Other phases of it are covered in the brief and that's what he's directing his attention to.

By Judge Brown:

Now is the motion headed Motion of All Defendants to Dismiss the Complaint for Lack of Jurisdiction of the Subject Matter?

By Mr. Stockett:

That's correct, sir.

By Judge Brown:

Thank you.

By Mr. Stockett:

If it please the Court, the argument that will be pre- [fol. 258] sented here is two prong and I will dispose of the second of those rather briefly. As the Court has seen from our brief filed in support of this motion, our second contention is that 42 USC 1971a does not encompass or include any registration or any other prerequisites for voting, but only the actual act of voting and I am not going to dwell on that point. I believe that we are correct. I do want to comprise the Court of something I am sure its already aware of which is that the United States Court

of Appeals for the Fifth Circuit in the case of United States against Dogan has decided this question adversely to our contentions. We with respect believe that we are correct. I am not going to waste the Court's time telling you that we are correct and the Court of Appeals was not correct.

By Judge Brown:

Well now Judge Wisdom for another Court has also written on the same subject in an opinion just filed.

By Judge Wisdom:

Yes, we held it did apply.

By Mr. Stockett:

I do not want to, I want to preserve this point and I think that we are correct in it but I am not going to argue, it's been briefed already and it is before the Court and I am not going to discuss that part of it.

By Judge Brown:

For the information of counsel the opinion I referred [fol. 259] to is in United States v. Manning, Civil Action 8257 of Western District of Louisiana, Monroe Division, and the opinion was just filed a day or two ago and you can get copies through that clerk I am sure.

By Mr. Stockett:

Now, Your Honor, we admit at the threshold of this lawsuit with what I consider to be a very basic question and that is the right or power of the United States of America by its Attorney General to bring this type of action seeking to invalidate state statutes setting up requirements for registration and to try to clarify or to narrow this jurisdictional question as much as possible I want to emphasize what we have already emphasized in the brief that the right of the Government to bring this action is conferred solely by 1971d, by 1971-c and d of

Title 42 and we believe that the gist of this lawsuit charges a violation of 1971a and this Court is well familiar with that subsection.

By Judge Brown:

Well now what difference does that make?

By Mr. Stockett:

We believe it makes this difference, Your Honor, that the Government cannot assert any Fifteenth Amendment rights as such but can only assert rights that are guaranteed and protected by 1971a and I would like to call to the Court's attention——

[fol. 260] By Judge Brown:

c provides the Government may bring a suit to enforce a does it not?

By Mr. Stockett:

To enforce a.

By Judge Brown:

And c, g or h provides that with respect to suits filed under c the word to vote shall mean and then it goes right on down through the act of registration and everything doesn't it.

By Mr. Stockett:

Your Honor, that definition is confined to the referee portion of the 1971.

By Judge Brown:

That's a good question whether it is so confined.

By Mr. Stockett:

I will say that it begins by saying as used in these subsections the word vote shall mean and its certainly our contention that when they said subsection they were mean-

ing 1971e and nothing else. If they had meant something else they might have said sections, but I am not addressing myself to that point. The point I am addressing myself to, Your Honor, is the difference between the Fifteenth Amendment and 1971a and we believe that the Government here is confined to 1971a and I can point out the difference. [fol. 261] I cannot point out the difference any better than did a three-judge district court for the Southern District of New York in the case of Comacho v. Rogers. I have this case reproduced if it would be of any aid to the Court here.

By Judge Brown:

Hand it to the clerk. Thank you.

By Mr. Stockett:

And on the last page of this case over on the right hand paragraph at the top this is what that court said, it quoted 1971a and it said this is merely a restatement of the Fifteenth Amendment except that it adds the words who are otherwise qualified by law to vote. The added words serve as a limitation in so far as the plaintiff is concerned.

By Judge Brown:

Well, now I am sorry I don't understand what you are trying to say. I don't mean that critically but the statute gives the Government the right to bring a suit to enforce a.

By Mr. Stockett:

Correct.

By Judge Brown:

Now you say this is not an a suit?

By Mr. Stockett:

No sir, this is an a suit, this is an a suit, it is not a Fifteenth Amendment suit.

[fol. 262] By Judge Brown:

What difference does that make as long as its an a suit?

By Mr. Stockett:

We concede its an a suit, Your Honor. The point I am trying to get to is this that this Three-Judge District Court in New York says an a limits a Fifteenth Amendment.

By Judge Brown:

I don't know how a statute can limit the Fifteenth Amendment.

By Mr. Stockett:

Simply because, Your Honor, this is a statutory right that the Government has asserted here.

By Judge Brown:

Oh, I see.

By Mr. Stockett:

And the statute says that anyone who is otherwise qualified by law to vote shall be entitled to vote without distinction of race, creed or color or condition of servitude.

By Judge Wisdom:

Well, now it seems to me that you are using the term qualify in the sense that an applicant must be registered, but I take the statute as not, I don't read the statute that way at all. In fact I read the statute as providing that if an applicant is qualified under state law and [fol. 263] by qualified we mean qualified according to constitutional requirements and if there are any requirements that are unconstitutional they have no application. If such an applicant is qualified then under the Fifteenth Amendment he has a right to vote and I think that really what this the effect of this statute is not at all as you read it. The effect of the statute is to help the state enforce proper constitutional qualifications.

By Mr. Stockett:

Yes sir. Well,—

By Judge Wisdom:

And all of that is under the Fifteenth Amendment. As a matter of fact its also under the Fourteenth and to the extent that you do not distinguish between registering for state elections and registering for federal elections its also under Article 1, Section 4 of the Constitution.

By Mr. Stockett:

Correct, but, Your Honor, I am not addressing myself to this question whether registration is encompassed in voting.

By Judge Wisdom:

I understand. You are talking about whether this suit is under the act but then the question is whether the act is authorized by the Fifteenth Amendment and the Fifteenth Amendment specifically provides that Congress may adopt appropriate legislation to make sure that the Fifteenth Amendment is not violated. Now Congress considered that [fol. 264] this was appropriate legislation because it corrected abuses and discrimination in the registration office. That doesn't fix qualifications.

By Mr. Stockett:

No sir, it does not fix qualifications, but all I say is that the only rights that the Government can assert here are of persons who are otherwise qualified by valid constitutional provisions.

By Judge Wisdom:

Well, now these applicants are otherwise qualified if they comply with the constitutional requirements of the state, not the unconstitutional requirements but the constitutional requirements.

By Mr. Stockett:

That's right.

By Judge Wisdom:

So therefore that is exactly what this suit is to see that qualified electors voters have their right to vote preserved and your question then is whether or not this is appropriate legislation really.

By Mr. Stockett:

No sir, I am not attempting to reach to that point. The point I am reaching to is this that the only rights, let me put it this way, Your Honor, prior to passage of the Civil Rights Act of 1957 an individual whose rights were deprived [fol. 265] under 1971a could bring a suit. Now assuming that registration is included in the word vote, assuming that, in that lawsuit the burden, the burden was on this individual or group of individuals who brought the suit to show that they were otherwise qualified by law. Now we say that the only rights vested in the United States by the Civil Rights Act of 1957 were those rights which individuals prior to 1957 could exercise and so we simply say this that each case stands on its own, that is each individual case and we also say this Your Honor, as we cover in our brief, that its been held repeatedly that the only basis that the constitutional basis it was held by this in the Raines case the constitutional basis for 1971a is the Fifteenth Amendment. Now we cited the Wynn case in our brief which I won't go into which we believe holds that the effect of the Fifteenth Amendment on state voting requirements is self-operative in that it just completely deletes any discriminatory provisions that may be contained in state voting provisions. That's the only effect. We believe that is the only effect that the Fifteenth Amendment has on state voting requirements and——

By Judge Wisdom:

Well, that isn't the only effect because the statute specifically authorizes Congress to enact appropriate legislation if it cares to.

By Mr. Stockett:

But, Your Honor, we don't believe that that appropriate [fol. 266] legislation can go outside the reach of the Fifteenth Amendment.

By Judge Wisdom:

That's correct. That's correct unless he can bring it under the Fourteenth Amendment or the First Article.

By Judge Brown:

Does this motion, this particular motion address itself to whether it is a three-judge case?

By Mr. Stockett:

No sir. No sir. It addresses itself to the right of the United States to bring this kind of lawsuit attacking the constitutionality of state——

By Judge Brown:

Of a statute that is ostensibly constitutional on its face.

By Mr. Stockett:

That is facially constitutional that does not patently discriminate on account of race and I won't, I believe that I can say with some certainty that our statutes under attack here do not on their face make any distinction on the basis of race. If they did I would concede that the self-operative section of the Fifteenth Amendment would invalidate them. That's not the case here.

By Judge Wisdom:

But here you have let us assume because this really is [fol. 267] basic to the Government's theory this complaint assumes that the constitutional requirements or qualifications are met by these voters, that is they are over twenty-one and they have the proper residence in the county and so on but that they are being kept off the rolls let us say contrary to the Fifteenth Amendment because of these unconstitutional requirements. Now that being the case this is properly an act for persons otherwise qualified within the literal language of the act and certainly within the both the language and spirit of the Fifteenth Amendment and that's why I can't follow your reasoning in this thing at all.

By Mr. Stockett:

Because the statutes here, Your Honor, are facially constitutional.

By Judge Wisdom:

Well all right whether it is on its face or not the question at issue is whether in spite of being constitutional on its face its unconstitutional considered in terms of its purpose and legislative setting and also in its application.

By Judge Brown:

Are you really saying that the United States is powerless to attack a statute because its unconstitutional in its operation.

By Mr. Stockett:

Unless a statutorily invested interest of the United [fol. 268] States has been violated I say it is powerless to do so, yes sir, and the point that we are trying to get to here is that this statute simply does not authorize this kind of lawsuit and they have got to proceed under the statute. They talk about the Fourteenth and Fifteenth Amendments but nevertheless jurisdiction is vested by the statute.

By Judge Wisdom:

You see this case that you cited to me is not at all in point because in that case the registrant objected to a literacy test and those literacy tests have been up to now at least have been held so that's in the same category let us say as an age requirement so that this applicant simply had no was not qualified, was not in the language of the statute "otherwise qualified to vote."

By Mr. Stockett:

And we believe by the same token, Your Honor, that if these applicants for registration don't meet these voting requirements which are valid on their face of the State of Mississippi that they are not otherwise qualified to vote in this case. That's what we analogize with.

By Judge Wisdom:

Sir, you are asking us to decide the case in advance.

By Mr. Stockett;

No sir, we believe this is a jurisidictional question. I am not going to go into the language of the Wynn case which——

[fol. 269] By Judge Wisdom:

I think that if the evidence showed for example that the statute was constitutional, that the interpretational clause was constitutional and that there had been no misapplication of the statute then see you would be correct but that's the point at issue.

By Judge Brown:

Well you would be correct because you had won, not because the Court liked pie.

By Mr. Stockett:

Well, Your Honor, I can't agree with you there but there is a correlative idea to this one that I have just stated.

By Judge Wisdom:

Its something like jurisdiction to determine jurisdiction.

By Mr. Stockett:

Yes sir, and without going into the cases of Davis v. Snell and these other cases as a correlative idea to this one that I have just stated which is this that if the statute under attack that if the registrar, I have specific reference to the Davis v. Snell case which this Court is familiar with, if the statute under attack would allow the registrar acting within the scope of that act, acting within the scope of the state statute if that statute would allow the registrar to [fol. 270] act in a discriminatory way and it was shown that the registrar had acted in a discriminatory way perhaps there may be some basis for declaring the act to be unconstitutional and in Alabama as this Court knows the

statute said that the applicant for registration had to understand and explain to the satisfaction of the registrar certain provisions. Now the Court found that that statute, that statute itself allowed the registrar to discriminate and that discrimination had occurred under that statute. We believe that all of these statutes under attack here do not do that. We believe this if anybody has acted wrongfully that if any registrar in Mississippi or any of these defendants has acted wrongfully its been outside the scope of these Mississippi voting statutes which are under attack and being outside of the scope of these statutes which are under attack there is no basis for declaring these acts to be unconstitutional.

By Judge Wisdom:

That's why I say this is very much like jurisdiction to determine jurisdiction because until this case is over and we have a chance to consider the purpose of the Mississippi statutes and the application of them then we can't say that they are constitutional and we can't say that the negroes would be qualified.

By Mr. Stockett:

Your Honor, in response to your observation with respect I believe that this Court could settle this jurisdic-
[fol. 271] tional question at the outset without having to wait to hear evidence for this reason if on the face of these statutes they do not permit discriminatory acts to be committed and we say they do not——

By Judge Brown:

Davis v. Snell had a statute that was not discriminatory on its face.

By Mr. Stockett:

I believe it was discriminatory on its face.

By Judge Wisdom:

What about Yick Wo?

By Mr. Stockett:

Your Honor, the Yick Wo case——

By Judge Wisdom:

Well, now let's not go into that. That's dragged in every time and I dragged it in myself but at any rate you must admit that that is a case of a statute that was constitutional on its face.

By Mr. Stockett:

No sir, I believe not. I believe it was held unconstitutional on its face.

By Judge Wisdom:

Unconstitutional on its face by consideration of the purpose and its setting.

[fol. 272] By Mr. Stockett:

Well, by vesting this great discretion in officials to do wrong to commit discriminatory and wrongful acts by showing that these acts had actually been committed, but we earnestly submit to this Court that the statutes under attack here far different from the Alabama statutes that were invalidated in Davis v. Snell. We believe that unless it can be shown that the terms of the statutes themselves permit wrong-doing to be committed that there is no basis for declaring the statutes unconstitutional and I would cite the Court to one Mississippi statute.

By Judge Brown:

Well you are talking about the merits of the case.

By Mr. Stockett:

I am talking about with deference, Your Honor, I think I am talking about jurisdiction of this Court to entertain this case and I would only cite the Court to one Mississippi statute which is Section 2111——

By Judge Brown:

If this court finally holds that this is not a 1971a case and that without 1971a the United States cannot bring a suit, a point on which I have considerable doubt, then it has nothing to do but enter a decree for defendants but it can only do that after it determines the merits of the case.

[fol. 273] By Mr. Stockett:

Your Honor, I submit that the jurisdiction can be determined and with deference should be determined.

By Judge Wisdom:

Only if we say as might have been said in the grandfather clause cases that the statutes are constitutional on their face because they apply equally to whites and negroes.

By Mr. Stockett:

In the grandfather clause cases?

By Judge Wisdom:

Well no reference to race and it applied to everybody who had a grandfather.

By Mr. Stockett:

Well, Your Honor, there of course is a distinction there which I think is obvious which is in the grandfather clause cases the Court could take judicial notice of the statutes of the State of Oklahoma of January the 1st, 1866, which specifically and by their terms prohibited colored people from exercising the franchise in that state. Now——

By Judge Wisdom:

Can we take judicial notice of the fact that negroes as a class have not sufficient education to understand all the sections of the United States Constitution and all the sections of the Mississippi Constitution?

[fol. 274] By Mr. Stockett:

With deference I don't believe that——

By Judge Wisdom:

I think we could in one case as well as the other. Lawyers don't know what they mean, what it means.

By Mr. Stockett:

Well, I believe that the Court is more justified in taking judicial notice of a statute than it is of some educational level of a group of people and I believe the distinctions between this case and the grandfather case although the grandfather case didn't mention race specifically it was patent, that was a clear reference that you could mate back to the statutes of Oklahoma which at the time of the saving provision was prohibited colored people from voting.

By Judge Brown:

Davis v. Snell simply said that the voter shall give a satisfactory interpretation of the meaning and purpose of the section of the constitution.

By Mr. Stockett:

To the satisfaction of the registrar, Your Honor.

By Judge Brown:

It was no reference on the face of the statute to race and yet it was stricken down because it was an instrument of discrimination.

[fol. 275] By Mr. Stockett:

Because the statute itself——

By Judge Brown:

That was a three-judge case too.

By Mr. Stockett:

It was a three-judge case, but we say, Your Honor, that the statute permitted, a finding there was made that the statute permitted the discrimination to occur and I was going to refer to a Mississippi statute which is Section 2111 of the Mississippi Code which I have referred to which makes it a criminal offense in this state for anyone to register somebody who is not entitled to register and to fail to register somebody who is entitled and we don't believe the statutes of this state are——

By Judge Brown:

Your argument now just undercuts Ex Parte Young and everything that's ever followed from it and its been rejected time and time again in all civil rights matters that the action to be state action must be legal state action, it only has to be done by one acting under color of his law, color of his authority even though its a violation of the state law to do the act.

By Mr. Stockett:

Your Honor, if the state law is unconstitutional that's the rationale of Ex Parte Young. The statute there was [fol. 276] unconstitutional on its face, it violated the due process clause of the Fourteenth Amendment on its face and we believe that this question of facial unconstitutionality is the one that this Court should address itself to and we believe and want to urge again that that is the widest scope of the Fifteenth Amendment is to invalidate that kind of statute and I don't believe I could add anything to the argument and to what has already, I would like to reiterate again what has already been incorporated in our brief in support of this motion.

By Judge Brown:

Very well. I think you have done a good job, Mr. Stockett. Let me suggest we are going to take now a five minute recess and I don't know whether how that counsel will feel about it but it would seem to me and the counsel might discuss it on both sides that it would serve the interest of everyone concerned if we took up next Number 4 from

Mississippi's standpoint and the Government then would respond to both 3 and 4 at one time. We won't make any ruling on it at this moment but it does seem to me that so much of this is going to be repetitive. Motion Number 4 is the motion to quash the three-judge court and certain specified matters. They seem to be closely related. The Court will take a recess for five minutes and keep yourselves in attendance so we do not *loose* any time.

(At which time Court recessed for five minutes.)

[fol. 277] By Judge Brown:

What's the disposition of counsel on the suggestion made just before——

By Mr. Wells:

Its agreeable with us, Your Honor.

ORAL ARGUMENT ON DEFENDANTS' MOTION TO QUASH THREE-JUDGE COURT AS TO SPECIFIED MATTERS

By Judge Brown:

Then we will proceed then to hear from the defendants on Number 4 Motion to Quash Three-Judge Court as to Certain Specified Matters. That's the caption of the motion that I find in my hand and who will address us.

By Mr. Wells:

Mr. Allain.

By Mr. Allain:

The Court will recall that a brief has been submitted in support of the motion and also a rebuttal brief submitted after the brief on opposition was submitted by the Government so the Court will have two briefs available on this particular motion. The first part of the motion is requesting that this court be quashed as to 244 of the Mississippi Constitution of 1890 before it was amended in 1955 and our grounds for that request is that this section has been declared constitutional by the Supreme Court of the

United States in the Williams v. Mississippi case and as the brief shows this court, being an inferior court is bound by the decision of the Supreme Court.

[fol. 278] **By Judge Brown:**

I think the press should be informed that the Constitution calls this an inferior court.

By Mr. Allain:

And I would like to inform the Court that I was using the constitutional language and not my own. I would like to say at the outset that I am not too sure whether or not I am striking at something which is not even in the complaint. By that I mean I do not even know whether or not the complaint is attacking the constitutionality or is requesting this Court to strike down 244 before it was amended. Now it is our position if 244 as amended in 1955 should be declared unconstitutional by this Court then under constitutional principles of law 244 before amendment in 1955 would become effective and operative. Basing it on that constitutional principle we cite the Court the complaint in this particular case in which there are certain allegations made that old 244 before the amendment was voted on by the people, was put into the Constitution by the Convention of 1890 and it goes into the same allegations made in the Williams case as to the number of negroes who were registered prior to 1890 and the number of negroes who were registered thereafter and tries to show the purpose and intent of old 244 as being an evil intent, and intent to disfranchise the negro, but as the Court will turn to the prayer of the Government there is no request in the prayer to strike down or declare unconsti-
[fol. 279] tutional old 244, that is 244 of the Constitution of 1890 before it was amended. Now there is some language in the first part of the complaint though the prayer does go to this extent the prayer goes further to say that they want this Court to legislate to a certain extent. In other words they want this Court to say that negroes who are qualified, are twenty-one years, et cetera, et cetera, and who can read, in other words forget about the interpretation of the Constitution et cetera, can read so if the Court should legislate in this case then that legislation

would strike at old 244 because under old 244 if you did strike down new 244 they would have to read and if they could not read and if they could not read a section of the Constitution to be able to understand and give a reasonable interpretation so you can see that the prayer would somewhat strike at 244 but it would strike at old 244 only to negroes so we ask the Government again are they intending to tell the Court this, to strike down new 244, therefore under constitutional principles old 244 would become effective. Now that's to be applied to white people——

By Judge Brown:

Now that's Mississippi Constitution isn't it?

By Mr. Allain:

That's right sir.

By Judge Brown:

Mississippi Constitutional principle whether the extin- [fol. 280] guishment of a subsequent amendment automatically restores the former section which was repealed by the unconstitutional section.

By Mr. Allain:

I did not know that it was limited to Mississippi.

By Judge Brown:

Well, I would think that would be a matter of Mississippi law rather than federal law.

By Mr. Allain:

So assuming that they are striking at old 244——

By Judge Brown:

Well, now let me ask you on the Mississippi law are there any Mississippi cases that hold that where a repealed section, a section repealing a prior section of the State Constitution is itself declared unconstitutional the repealed section remains is sort of revived.

By Mr. Allain:

Your Honor, I can't cite the Court a case at this time. It's my understanding that to be the law unless the statute itself makes specific in there should it be declared unconstitutional that the old section——

By Judge Brown:

Well, what do you say to this, Williams, I read it again yesterday, they are very clear to leave open an attack based upon the administration of the registration statute [fol. 281] under old 244 and it does seem to me that as a part of this complaint they make that kind of a contention that in its administration that while it looks all right on the face of it it doesn't work that way.

By Mr. Allain:

That's true sir, and we are getting back into what the Court was discussing with Mr. Stockett previously and I would like to reiterate the position we think is a sound position is this, it would be a very chaotic condition not only in Mississippi but else where if we have here a statute which has been declared on its face constitutional by the Supreme Court and also someone went into the intent of it because they did make that allegation and come along and say that six registrars can make a statute which is valid, a constitutional provision which is valid make it unconstitutional. Now the question is this—how many registrars have to have an evil practice because six registrars assuming for this argument that they show six registrars is my registrar say in Adams County who is doing the duty that he is imposed upon by these statutes is that going to say that the other seventy some odd are actually applying the law as it should be applied. That's going to say if you have a district attorney down here and he has got three negroes who committed murder and three white people who have committed murder and he refuses to prosecute or bring before the grand jury the white people but [fol. 282] does prosecute the negroes. Is he discriminating and therefore do the laws of murder in the State of Mississippi fall out of the window because of the application and that's getting back, Your Honor, to this Snell case and the

Yick Wo case. In other words these people could act, they could act within that statute. In other words in the Snell case if you gentlemen here were looking at an appeal made to you by a negro who said I was refused the right to register they cannot look there and say well did you give a reasonable interpretation. They must only look at one thing what authority by that statute does that registrar have and as they said in there he has the authority to say to my satisfaction you did not understand and explain it and the Snell case goes off on those two words understand and explain. Your Honors will find in the Snell case there is language that says there is no reasonable understanding or reasonable interpretation.

By Judge Brown:

I don't understand the difference between give an explanation and to give an interpretation and again I am talking from experience in Hattiesburg where they were asked to copy a section of the Mississippi Constitution, that's what the application required and then they have to give an interpretation and if they just didn't copy it, if they copied it it was wrong because they copied it and it wasn't an interpretation and was in exact words. An explanation and [fol. 283] interpretation to me are the same thing unless I don't interpret the English language correctly.

By Mr. Allain:

Well, now don't get me wrong. I am not saying the word interpretation and explanation are different to that extent but explanation in and of itself, interpretation in and of itself may be bad because that means as the Court in the Snell case says sometimes four justices of the Supreme Court will think of one interpretation but the Snell case now citing from that case says there is no requirement in the Boswell Amendment there is no requirement that the understanding or explanation be in writing. The language does not call for what, a simple, fair or reasonable understanding or explanation. They make reference to that as though they are giving credence to the fact that in the Boswell Amendment it says reasonable interpretation. Now if that negro come before this Bench and said under the Boswell Amend-

ment had you given an interpretation or explanation or understanding to the satisfaction of the registrar all this Court can look to is to say this we can't look into what an explanation to his reasonable satisfaction was but under the Mississippi law this Court can say this and the Board of Commissioners in the county can say this has he given a explanation of the constitutional provision, no sir, a reasonable explanation. In other words they are trying in De novo where under the laws of Alabama they were merely [fol. 284] looking at the discretion that was placed in the registrar. Now in Mississippi they can go into the county commission and say we have been discriminated against, we have not been allowed to register, they will take that application before him, its in writing. Another thing in the Snell case seemed to think the Boswell Amendment was bad because in other words it was a case of getting up here and saying you did or didn't do it, but now under new 244 in Mississippi it has to be in writing, by the Congress they have to keep it twenty-two months so they could come before this Court and say this and the Court could look at it with a judicial eye and say is that a reasonable interpretation of Section 130, not have you explained it or interpreted it to the satisfaction of this individual, have you given a reasonable interpretation. They can sit as a registrar, not look behind to see whether he necessarily used his discretion, they can say this is a reasonable interpretation, therefore we put you on the rolls. There is the distinction not only made by the amendments here but made by the Court in the Snell case. They plainly said that it wasn't a reasonable interpretation, it wasn't reasonable explanation, it was explained. Now we say that our statutes meet that burden by allowing it to be a reasonable interpretation, therefore the court can look at it with a judicial eye and I say——

[fol. 285] By Judge Brown:

Aren't you arguing the merits as though this is a motion to dismiss for failure to state a claim because on your argument 244 as amended requiring the read and interpretation is susceptible of fair application?

By Mr. Allain:

No sir, I do not think so because of this in our distinction and here is where our distinction lies in the application and the face of it. If its on the face of it then a registrar applies it with an evil eye and an uneven hand this Court or a District Court would still have the right to issue an injunction against the registrar who is committing this evil act to——

By Judge Brown:

No, I don't think I made myself clear. I am just trying to get trying to understand your argument. If the statute or Constitution of Mississippi is attacked because unconstitutional and we assume further that it is something different from what was involved in Williams then don't you have to for this purpose concede that it is a matter for a three-judge court up to that part. I won't use the word concede but doesn't that follow?

By Mr. Allain:

No sir, I wouldn't say I would follow on that either. I would say that you would have to be a substantial con-
[fol. 286] stitutional question as to striking at the unconstitutionality of the act and not striking to the unconstitutionality of the action.

By Judge Brown:

What you are really asking us to do is hold that no relief should be granted because for the reasons you assert 244 as amended, let's not get 241 now, but 244 as amended is capable of lawful fair application and is therefore constitutional.

By Mr. Allain:

That's right.

By Judge Brown:

But that doesn't go to jurisdiction and that's this motion.

By Mr. Allain:

Well it goes to jurisdiction I would say it went to this three——

By Judge Brown:

Are you saying that the attack is so frivolous that it is patently without any foundation at all?

By Mr. Allain:

I am not saying the attack is so frivolous. I am saying that there is no substantial constitutional question for the mere fact that the Supreme Court of the United States has so held as to 244 and I was going to get into the other part to show that if 244, original 244 was constitutional it is merely built the amendment 244 as amended is really built [fol. 287] on 244 before the amendment and there will be no substantial——

By Judge Brown:

I can see a very vital distinction that I don't think was even touched in the Williams case when it was in the disjunctive it was a literacy test, it was an intelligence test, you either had to satisfy a literacy test or an intelligence test but now you have to do both.

By Mr. Allain:

That's right.

By Judge Brown:

And that's quite a different thing.

By Mr. Allain:

You are not adding the addition doesn't make it unconstitutional though it may be a little harder for someone to pass.

By Judge Brown:

It may see, that's the question.

By Mr. Allain:

In the Lasseter case they upheld read and write, read and write a section of the Constitution of North Carolina.

By Judge Brown:

That's a thing that's capable of mechanical ascertainment. That's a thing that's capable of mechanical ascertainment. An interpretation is not.

[fol. 288] By Mr. Allain:

Well, then let me ask you this. What do you mean by read and what do you mean by write. Let me say I am the registrar, I am the registrar in North Carolina, this is a valid law, all right, so you come to my office and a negro or a white person or anyone else says well I can read or write, all right I say you are white read this one section right here, you are colored you read this other section, they say read or write any section of North Carolina, they can give you any section. In other words suppose I do that does that strike down the whole constitutional provision because one man and if not one man then two men and if not two men then three men.

By Judge Brown:

I believe you have the very question that they had in Davis against Snell. I don't mean to say that Davis against Snell forecloses the problem but it presents the problem well. There is such an undefinable standard under the requirement of interpretation as to be unconstitutional and I don't think that's a frivolous question. I think you can make good arguments either way.

By Mr. Allain:

I think in the Snell case though you see there was no reasonable interpretation, it just said explanation, understand and explain and in the Snell case they go on to quote the very language out of the Snell case which said it didn't [fol. 289] say reasonable and they go on through their opinion which would lead you to believe that a reasonable interpretation, daily there are men sitting in this box over

here and this box over here must decide what—they must decide whether a man has been proven guilty beyond any doubt—what kind of doubt—beyond a reasonable doubt—when that goes to an appellate court what happens—they decide not whether there was some doubt in this man's mind but reasonable doubt. This Court right here makes those decisions on what is reasonable. That's all this statute is giving. Its giving to the registrar the right in his discretion to say you have given a reasonable interpretation. Now its not my interpretation——

By Judge Brown:

Isn't this the controlling law that a three-judge court must be convened and must hear a case and determine it unless the attack on the constitutionality is so patently frivolous that there is no question at all about the constitutionality or unconstitutionality of the statute?

By Mr. Allain:

That's true, sir, to this extent there is no substantial constitutional question, that's our theory.

By Judge Wisdom:

I think you are making a very effective argument, there is no question about that, but isn't it seems to me that the answer that the Government would give would be that is [fol. 290] why its necessary to determine the purpose of the statute and also how it in fact works out. For example, let's take Louisiana for example, the state I know more about. In 1890 there were 150,000 registered negroes and 150,000 registered whites. After the enactment of the grandfather clause within some few years it was cut down to just less than 1%, less than half of 1%. Now if we know too that the purpose of the grandfather clause and it seemed to be evident that the purpose of the interpretation clause is to simply substitute for the grandfather clause after it was held unconstitutional. Now if that is brought out and the legislative history and if it can be shown by legislative history and these statistics show that instead of having negroes voting as they used to you now don't have them voting at all to any extent in Mississippi and in some coun-

ties no negroes registered and others very few isn't that an answer to your question and doesn't it show that the whole thing was a device which was well understood to serve as a means of preventing negroes from getting on the rolls. That's a long question but that's what's on my mind.

By Mr. Allain:

All right sir, go back to what you are talking about legislative history and the——

By Judge Wisdom:

Now I agree with you that one or two registrars or six registrars would not necessarily prove it but perhaps these [fol. 291] other things would.

By Mr. Allain:

Well, let me address my remarks to the legislative history which was brought out in the Davis v. Snell. It was always my belief that, the only reason you went back to look at the legislative history intent was not to declare it unconstitutional but was to try to sustain the constitutionality. Now in the Davis v. Snell it was necessary to go behind the act because they said this explain and understand as Judge Brown has pointed out could be interpreted could be something else, they said we want to hold this thing constitutional and when they went behind it to the legislative history they found out——

By Judge Wisdom:

I just want to interrupt briefly. No doubt that was one of the original justifications for going into legislative history but it seems to me we are long past that now and you go to legislative history not just to sustain constitutionality but to determine the intent of the statute and how it was meant to work.

By Mr. Allain:

Well sir, I would say in all deference to this Court I have not gone beyond that principle for the simple reason then we would get into another situation but I could bring——

By Judge Wisdom:

Take the Vermillion case. There is nothing wrong [fol. 292] with rezoning a city's election districts but the Supreme Court unquestionably determined that in its setting the purpose of the rezoning of Tuscaloosa was to gerrymander the negro voters out of Tuscaloosa.

By Mr. Allain:

Well sir, now in that case as you recall the act itself was (unable to understand counsel) the act itself gerrymandered. The act on its face setting up a twenty-eight sided area was so patent on its face that they felt that——

By Judge Wisdom:

Its like a great many other gerrymandered election districts which the Supreme Court never considered before but did in this case because it considered that it was a violation of the Fifteenth Amendment.

By Mr. Allain:

Well, let me say this in passing on that and I am speaking on general terms, lot of times they say good cases make bad lawsuits, but assume the State Legislature of Mississippi had——

By Judge Wisdom:

I thought you were right in that case, I went along with our Court in that case the Vermillion case but the Supreme Court reversed us.

By Mr. Allain:

Well sir, thats true on that. Let me get back to [fol. 293] legislative history. The Mississippi Legislature the other day a reapportionment. Well suppose someone comes in and challenges it and challenges it on this ground —I can prove by the witness stand that many legislators passed it for one reason only, you people of the press I am not accusing the legislature of doing this, but because of a selfish motive I got money for it or because somebody promised me something. That is conceived and evil——

By Judge Wisdom:

That's a different thing. That's a different thing. That's not a question how the statute was intended to work. That's going into the motive of the legislators who passed it but the other question legislative history to show how the statute was intended to operate is quite a different thing.

By Mr. Allain:

Sir, you could get into such a quagmire behind the legislative intent.

By Judge Wisdom:

They are doing it and the certainly the courts have doing it pretty regularly now.

By Mr. Allain:

Well sir, I still say we should adhere to the old principle the only time you would go back into that you would go back into it to attempt not to make a statute unconstitutional but a device originally started out to hold it constitutional.

[fol. 294] By Judge Wisdom:

Its hard to meet the argument that it should cut both ways.

By Mr. Allain:

Well sir, I was discussing 244, new 244, we still say the Supreme Court has spoke on old 244 even leaving the door open; we don't think that that application because see they have already said the legislative history was all right because that allegation was made. The only allegation that has been made here about 244 they said that on the face it was valid so it would have to be struck down because of the application and we have already discussed that. The second point as we see it——

By Judge Brown:

Of course Brotter against Gail was affirmed per curiam by the United States Supreme Court and it held a three-

judge case in Montgomery, Alabama that an inferior court was constitutionally permitted to determine today that a decision would no longer apply and what's the name Plessey against Ferguson Judge Lynn dissented on the ground that it was just a complete reversal by an inferior court of Plessey against Ferguson. Now I don't know, there is a substantial body of law building up now that we have the duty to look at this thing in the context of contemporary cases. I don't know where that would lead but it certainly [fol. 295] would lead to a narrow application on *sturstacisus*——

By Mr. Allain:

Yes, it would.

By Judge Brown:

Of what Williams says.

By Mr. Allain:

It would lead to narrowing the case on *staratacisus* Over All. It would form a, in other words we lawyers take a case to the Supreme Court would settle very little if the Court in their mind say its changed and this Court as we cite in our brief and all courts certainly have held that and we cite the——

By Judge Brown:

But what do you do with 241a.

By Mr. Allain:

(Unable to understand counsel) Howard v. U. S. Fifth Circuit follows the rule as stated by the Supreme Court in what leaves in need of modification though to the court and that is uh——

By Judge Brown:

What do you say about 241a?

By Mr. Allain:

Well, let me just get back to 244 now and this is in our briefs the Darby case which was not a Georgia District Court which the Government tried to get this Court to [fol. 296] follow, it was this Court and under all principles of comity that this Court should not follow the Northern District but at least follow its own decisions. Now we realize its not the same panel but it is the same court.

By Judge Brown:

Its not the same parties.

By Mr. Allain:

Well principles of law (Unable to understand counsel as talking too low and too fast) I am not talking about res judicata. In comity and good administration of justice that this Court to follow what this Court said several years ago and it decided the constitutionality of 244. Now I would like to say this the Government has said that they had two or three different grounds, therefore this ground of constitutionality wasn't necessary but the Courts have held as we cited in our brief the Mississippi case the Woods case in which I think res judicata was one ground and the other was that the Erie Tompkins said that the state court doors were closed, they based that on two grounds, either one of them would have been out of Court and they said when you have two grounds in which there had been judicial facts and judicial argument and judicial eye and judicial determination then neither one of them is dictum or non dictum so the Darby case I say is controlling in that it was made by this Court, not this panel, and that therefore it [fol. 297] should be followed. Now addressing my remarks to 241a dealing with moral charcter Your Honor is well aware of the fact that the court takes notice or should look into its jurisdiction and this Court has a duty on its own an obligation to look to see whether or not they do need a three-judge panel. Whether or not there is a substantial question of constitutionality as to 241a. We did not argue it for the simple reason we do not feel, we feel it is a frivolous motion or contention to say that 241a is unconstitutional and we base it on this. Now we know moral character

to be a wide range of things. In every circuit I believe save and except maybe the Fifth Circuit there is a rule that a lawyer to practice before that court must be of good moral character. Now there is no definition about one divorce or one drunk or one speeding ticket. Its left up to the court to decide whether that man is of good moral character. If you try to get a job with the Government, Mr. Doar, Mr. Owen, their good moral character was looked into and who decided good moral character, no one went out there and said this and this and this you can't have a government job. They take everything together and look at it and say this man is of good moral character. Now we don't think that good moral character could really be defined by the legislature, the legislature say this is what we mean by good moral character. We say that it is a discretionary thing placed into the registrar and you can come into court and you can say well he turned me [fol. 298] down for good moral character, say he had a speeding ticket and they say that would not be against his good moral character. In other words its not an arbitrary thing which exists into that individual. I would like to further say, your Honor, in the Lasseter case in the footnotes which was in the opinion you will find that the Mississippi laws governing the electorate are cited in there which seems to give approval that the Supreme Court even looking at them said look there are laws of nineteen of states that are similar to this one and therefore we are not going to strike down North Carolina—(unable to understand counsel)—or the Williams case has been cited on numerous occasions. Your Honor, I have here in my hand prepared by one of the attorneys in this case the following states and the District of Columbia require good moral character for licenses as a bar, voters, lawyers, dentists, doctors, they don't set out anything, they just say good moral character, they leave that to the board. You can go to a court or appeal it so we felt that the court on their own motion would say well our own lawyers work on the good moral character, our own federal — work on the good moral character, all the states have them for dentists, doctors, lawyers, horse doctors, everybody else, so we didn't even intend to go into that too far because we felt it was so on its face and everywhere else so that was a legitimate thing for us to——

[fol. 299] By Judge Brown:

Well, I return to the question that Judge Wisdom had put to you and here we know a little history first hand. Each one of these changes has followed right on the heels of a decision of a court, the Supreme Court, interposition resolutions, decisions of even the Fifth Circuit in some of the voter registration cases, statutes are amended almost immediately and everybody knows except the Judge that the reason they were amended was to meet the decision just announced in New Orleans.

By Mr. Allain:

Well, sir, your are assuming that everybody knew that.

By Judge Brown:

Well, I think they did. I don't think there is much doubt about it, they may not know it judicially, I may not know it finally as a judge but we all know that, it just was too much of a coincidence for it to have happened out of just thin air. Now are those circumstances not relevant to the determination of the legislative purpose and hence its interpretation and its reasonableness if for example you have found a mechanism which has all the appearance of an absolutely fair provision but it is enacted at the very moment a crisis has been precipitated by a judicial judgment can not the Court look at that circumstance to determine what the purpose of the legislature was.

[fol. 300] By Mr. Allain:

Well sir, I say this in deference to Judge Wisdom who seems to think that you should go back into that you are changing the law to such an extent to where are we going to stop, we are dealing with human rights and not property rights and I abide by that too, but if you do it in this case——

By Judge Wisdom:

Well, the Supreme Court did it in property rights in the Grossier case when they looked into the, of course it was the right of free speech part of that too, but on its face

it was property rights the question of taxing the Times Picayune because the Times Picayune was attacking Huey Long.

By Mr. Allain:

Sir, you have got me at a disadvantage.

By Judge Wisdom:

I have and I am overstating the case and oversimplifying it besides and sometimes we do that so you will have to excuse me.

By Mr. Allain:

I would say if the Court is going to go into the legislative history not to make this act constitutional, not if its ambiguous on its face, but to go away from their old rule of jurisprudence then Judge Wisdom you are correct, but I say if this Court does that you will be going down such a long dark road you will never be able to turn away from it.

[fol. 301] By Judge Wisdom:

Do you know the reason why the rule used to be that you couldn't go into the legislative history because the English and it was derived from the English system because the English considered that all sessions of Parliament were executive and therefore they couldn't break the privilege. That's the only reason for not going into the legislative history.

By Mr. Allain:

I thought it was because they just never could tell——

By Judge Wisdom:

No, I think that may be part of it, but I believe the other is the actual reason for it.

By Mr. Allain:

If the Court please, I would like to say one thing about the grandfather clause which we find here differentiated

from the Gwenn or the Lane-Wilson to this extent that there is nothing in here that says if your grandfather registered or immediate descendants therefrom, in other words these people before 1954 negroes and whites they say 20,000 negroes were registered before 1954 they have earned the right to vote and register under the old law. Now the legislature really looked at two things probably, should we disfranchise everybody that have earned that right in order to upgrade our electors, they had to have some cut off there, [fol. 302] they are not saying just because your grandfather earned the right some years ago as they did in Oklahoma, they are saying because you as an individual went in there and you earned that right to register and vote and that's the cut off date and another thing I doubt if it would pass if a lot of good people in Mississippi felt that they were going to have to go back in and reregister under a condition which they felt was an upgrading of the electors, old folks, maybe my parents or somebody else's in here parents, old people felt that they couldn't do that so it was legislative necessary if we are ever going to upgrade the electorate in Mississippi then we have got to have a cut off date and we are not giving these people anything, we are not saying because of your grandfather like they did in Oklahoma, you don't have to take it, we say you earned that right prior to 1954 and we are not going to take it away from you. Your Honor, we say that the grandfather clause or what they call the grandfather clause is acutally not a grandfather clause, its a — clause, you have already earned that right and you don't have to take this other test and we think it is distinguishable from the Lane-Wilson—(unable to understand counsel because talking too fast)—when the Oklahoma law was that a negro could not even register so we do not think that there is any grandfather clause business in this particular case to that extent so we submit to the Court that there is no substantial constitutional ques-[fol. 303] tion based on the Williams case, based on the Darby case which this court has decided and as to moral character we feel on its face it is so——

By Judge Brown:

Well, I certainly would say this about the Darby case it certainly is deserving of the most careful consideration. I understand, I seem to recall that that was not appealed.

By Mr. Allain:

No sir.

By Judge Brown:

Now that doesn't mean that a court decision is any less valid because it wasn't appealed. Its pretty good proof that the people thought it was pretty good but since the United States is sovereign under a statute of Congress, at least that's one of the questions, is carrying out a statutory duty to test it of the fact that it was not appealed I think at least relieves the Court of any embarassment over a serious reconsideration of the problem. Otherwise for the Southern District of Mississippi the law of Darby would be the law of the *would be the law of the* Meads and Persians. It could never be questioned by nobody see.

By Mr. Allain:

Well, an appeal could be taken from this Court if this Court so found the same way an appeal could be taken if this was a proper panel of three judges and therefore should have sat as three judges. They have that what you are [fol. 304] talking about that appeal direct to the United States Supreme Court which you said to Mr. Drake was one of the things Congress had intended so it could be tested and we are not the Government many times urges upon this Court and other Courts that the Alabama District Courts are to be followed, the Alabama District Court or the Louisiana District Court has spoken. We are not saying that. We are not even saying go beyond Jackson up here and say follow Judge Clayton, we are saying follow this Court, their own decision. Are there any more questions?

By Judge Brown:

I believe that's fine. You made a very good argument.

By Mr. Allain:

Thank you.

By Mr. Wells:

If the Court please, may I make just one observation in regard to one question Judge Wisdom asked about 241a the good moral character just to leave this with the Court. To assume any phase of even the atmosphere in which it was passed that 241a was passed to prohibit negroes from voting the good moral character must of necessity carry with it another presumption that the great majority of those negroes who are not now registered are not of good moral character and we don't feel that way and we hope the Government is not taking that position because we don't think that applies to our Mississippi negroes.

[fol. 305] By Judge Brown:

I don't read the complaint that way. I think as I interpret it this is a means almost an undiscoverable means by which discrimination in fact under the guise of law can occur and of course that would be a question that the Court would have to determine on facts.

(At 11:59 A.M. Court recessed until 1:30 P.M. for lunch.)

By Judge Brown:

Are you ready to proceed with the argument I believe now to these two motions?

By Mr. Doar:

If the Court please the position of the defendants first was that 1971a does not authorize the United States to challenge the constitutionality of these statutes. Our position is that this goes to the power of the Court and that in the case of Lane v. Wilson, in the case of Davis v. Snell and in the Mississippi case in which this court ruled in the case of Darby v. Daniels in each one of these cases statutes were challenged as being unconstitutional by private citizens. Now in 1957 the United States Congress authorized the United States to bring these actions to en-

force Fifteenth Amendment rights. Our position is that we have the same right as a private citizen would have to challenge these statutes and that there is ample precedent for such challenge in the courts including this Court in [fol. 306] Darby v. Daniels. The next contention that was made by the next motion——

By Judge Wisdom:

Before you leave that you say the same right as a private citizen but you also take the position that under the 1957 act you are specifically authorized.

By Mr. Doar:

Yes sir, specifically authorized by the 1957 Civil Rights Act and the courts, the Supreme Court in the Raines case spoke of the United States enforcing of there being a great public interest and the United States taking the——

By Judge Wisdom:

As guardian of the national interest.

By Mr. Doar:

That's right.

By Judge Brown:

Its kind of awkward to ask you what your opponent is contending but I had some difficulty and I still do and I want to see if you can answer what you think his argument is. Subsection c clearly gives the Government the right to file suits to enforce subsection a.

By Mr. Doar:

That's right sir.

By Judge Brown:

Now I first thought he was arguing it was really not an a suit. Now in what respect is it not a section a suit. [fol. 307] apart from the question whether to vote means also to register.

By Mr. Doar:

If I understand the defendants' contention correctly this is not an a suit because all of the officials we have alleged if they violated the statute acted wrongfully and outside of the scope of the statute and that we would have a right to stop that but we wouldn't have a right to challenge the statute in and of itself under a. Maybe I don't understand it either but that's what I gathered was his contention.

By Judge Brown:

Well now when it comes to showing say within the Williams case or YickWo or others a practice that is actually unconstitutional how far do think you have to go in making everybody who acts for the state how far do you have to go in showing that everybody acting for the state actually partakes or participates in such illegal actions or to put it another way how far can you go in merely showing that say here six registrars are engaged in it as hearing upon whether this is a sufficient showing of unconstitutional practices?

By Mr. Doar:

Well, I don't think you have to show that every registrar in the state was using this statute to have it declared unconstitutional. After all in Davis v. Snell they only went into the practices of one registrar in Mobile County I believe. In Darby v. Daniels although the proof wasn't [fol. 308] sufficient the proof only involved one registrar. We take the position that we will prove more than that, how much more we should prove or must prove depends I think on the type of proof that's offered. We would statistically we would show the statistical registration figures throughout the state. The fact that the statutes were being used, not how they were being used, but just the fact that they were actually being used we would show that throughout the state by means of admissions or interrogatories. The fact that the statute was being used discriminatorily we would show that through a number of specific examples that we though would highlight the practices and then see what the defendants did by way of counterproof, if any, with respect to practices throughout the entire state. That

would be the way we would contemplate presenting the case to the Court on the trial on the merits. Now moving on to the arguments that were made just before lunch that new Section 244 is barred by the Darby case and the second contention that old 244 is barred by the Williams case and the third contention that the good moral character qualifications while not barred by any particular case is so frivolous that it should not merit the court's attention in any way it seems to me that what the defendants are arguing, if the Court please, is that these contentions are so frivolous that this Three-Judge Court should just close the door and not let us get in to have our day in court and its not that we are [fol. 309] wrong, it goes much farther than that. Its that they are asking this Court now to rule that we shouldn't have an opportunity to lay the facts before this Court to enable it to decide whether or not these statutes do or do not violate the Fifteenth Amendment. Now what is the basis for their argument with respect to new 244? They argue its based upon Darby and that was a decision by this Court, but there are several very clear distinguishing factors in respect to Darby v. Daniels particularly when you consider it in the light of barring the door to another litigant who was not a party to that case to come into court to present the proof. The first thing is of course we are not the same parties. The second thing in that case the Court very clearly said that there was no showing that there had been any discriminatory use of the statute whatsoever, that there had been a failure of proof by that particular plaintiff in that case. In the third place——

By Judge Brown:

Of course it does, it did rule on the face of the statute it was valid, I mean on the face of 244.

By Mr. Doar:

Yes, but it didn't face the question of whether or not a showing of discriminatory use would be relevant on the purpose of the statute as being a device to discriminate against negroes contrary to the Fifteenth Amendment. In the third place at the time that this Court decided that [fol. 310] decision the Court didn't have the benefit of the

Supreme Court decision in the Lasseter case and in the Lasseter case which was decided the following year they never discussed any mere literacy test there were a number of things in that case that are very significant. First, the Court said that a literacy test may be unconstitutional on its face and they quoted Davis v. Snell in which they said the test was the citizen's ability to understand and explain; the legislative setting of that provision and the great discretion vested in the registrar made clear that a literacy test was merely a device to make racial discrimination easy. Now the Court its argued here that with great feeling that in Alabama that the test was to the satisfaction of the registrar and here its a reasonable interpretation and yet in Darby v. Daniels this Court didn't say anything about looking at particular applications to see if the statute was reasonable because it said very clearly here that when they were talking about actual discrimination and I am quoting although some of the written aplications exhibited in connection with the testimony were sufficient to raise an issue of fact, it is not our province to set ourselves up as the registrar voters. Furthermore in the last sentence of Lasseter versus this Court said that they were called upon, any court is called upon to determine whether the particular test used is a fair way of determining whether a person is literate or whether or not its a calculated scheme to lay [fol. 311] springs for the citizen. Now we submit that we should have that opportunity to have this Court make that determination. Finally, if the Court please, the freezing argument was not even considered in Darby v. Daniels. Now the freezing argument, Your Honor, is that a state where all of one particular race or a great percentage of one particular race is on the rolls during a period where there has been shown to have been racial discrimination against the other race that particular state is powerless to raise its standards and in effect freeze off people who of the minority race or the race against whom discrimination had been practiced by means of higher standards.

By Judge Brown:

In other words you have to continue the inequality until they get equal.

By Mr. Doar:

That is right.

By Judge Cox:

Well exactly you are asking that the same low standard be continued to be applied.

By Mr. Doar:

That's right, we are asking there is another alternative perhaps, but if the state insists that these people who got on the rolls during a period when low or no standards were applied if the state insists that those people stay on the rolls then the same low standard applies.

[fol. 312] By Judge Brown:

That is one of the serious questions in the case?

By Mr. Doar:

That's right, but that freeze point, Your Honor, certainly——

By Judge Wisdom:

I had difficulty with that question because it might even mean that the registrars would have to continue we will say to violate the law if they continue the same low standard, let us say not really low standard, in many cases not necessarily low standards, but let's say assistance when they are not supposed to give assistance. Then what happens when a state adopts a new requirement? In effect the whites are already frozen in so does that mean that they could never have a new requirement unless it wiped the slate clean and started with a fresh registration?

By Mr. Doar:

I don't think, Your Honor, you can have a new test unless you wipe the slate clean if its shown that those people got on the roll when there are discrimination against negroes, I just don't think you can do it under the Fifteenth Amendment, and the reason is as the Court has said over

and over again taking Lasseter a literacy test, a read and write test fair on its face.

[fol. 313] By Judge Brown:

Does that go to constitutionality of the statute or a violation of the civil rights voting statutes. The reason I put it that way is to determine what kind of a court would hear that case.

By Mr. Doar:

Well, I think we have a statute that is applied throughout the state that the legal theory that this statute is unconstitutional because it in effect freezes inequities on the roll goes to a three-judge court and I do believe the statute is unconstitutional for that reason.

By Judge Wisdom:

We have had some cases that come awful close to it. Dogan, of course, was not a statute but a let us say regulation by the registrar requiring new applicants to see him which had the effect of applying only to negroes, is that correct?

By Mr. Doar:

That's true.

By Judge Wisdom:

Now then we have got a couple of other cases that have been close.

By Mr. Doar:

The other cases are the school cases.

By Judge Wisdom:

You had that school case Ross against Dyer.

[fol. 314] By Mr. Doar:

Ross against Dyer that brother sister that new statute the new rule was applied equally to both races.

By Judge Wisdom:

Suppose that the legislature adopted say for the sake of argument a regulation or a statute requiring as a qualification that everyone have a third grade education. Would that fall within your order or category of unconstitutional statutes because it would in effect not apply to whites?

By Mr. Doar:

This would depend upon a showing of whether or not under the circumstances as existed in the state that was a more onerous requirement for new people and whether or not the state was responsible in any way for that, in other words——

By Judge Brown:

In other words your basic theory is you can do two things; you can show that a statute ostensibly valid on its face is being administered in such a way as to be unconstitutional or you can sort of build a brandized type record if I might use that expression to show the facts which indicate why the statute is for discrimination on its face because of the peculiar setting in which it is applied.

By Mr. Doar:

That's right.

[fol. 315] By Judge Brown:

You don't need judges to imagine why it has discriminatory potentialities.

By Mr. Doar:

No, we do not. It's all a matter of evidence and proof.

By Judge Wisdom:

In effect the permanent registration though itself has the effect of freezing because it accepts those who are on the registration rolls at the time a permanent registration law goes into effect. It does not accept those who are not of course so they are exposed to the test of permanent registration.

By Mr. Doar:

Yes, but there isn't anything that says that the state has to do it that a way and the state when they start permanent registration or require new standards could have reregistration.

By Judge Wisdom:

That may be an answer.

By Mr. Doar:

As a matter of fact in Louisiana to take an example in that particular state where there was permanent registration when they used the constitutional interpretation test before they used it we were able to show in Louisiana that a purge of the rolls of negroes that were on the rolls was [fol. 316] carried out in fifteen or sixteen counties so that the state not only raised the standards but set it up so all the negroes were off the rolls before they started requiring new tests. Now our contention in that case was that was sufficient proof to justify a declaration the statute being unconstitutional for the two reasons that you have outlined. Now it may be that we would have a failure of proof in this case.

By Judge Brown:

It seems to me, Mr. Doar, that you are getting close now to the question of the desirability of trying to chop the case up into two phases and that seems to me to be the subject of the next motion and do you think it would be appropriate then for you, do you think you have about finished on these two.

By Mr. Doar:

Yes. The only——

By Judge Wisdom:

You haven't discussed Williams. I would like to hear what you have to say about Williams.

By Mr. Doar:

I will be glad to discuss Williams.

By Judge Wisdom:

Not too long, I don't want you to go overboard and make a production out of it but briefly.

By Mr. Doar:

Briefly, Your Honor, there was no showing in Williams [fol. 317] that there was any actual evil use. That's the distinction we would make in that case. We would show how that particular statute has been used and that's the distinction we make between why we are not bound by the Williams case with respect to old 244. Furthermore, with respect to some of the statutes in the Mississippi Constitution we claim that as long as we have standing under the Fifteenth Amendment that to require a person to read some of these to be registered where they have some technical legal or latin terms is unconstitutional under the Fourteenth Amendment.

By Judge Wisdom:

Well it seems to me it might even be unconstitutional on its face if an applicant were required to interpret, for example, some provision saying that the court has power to issue writs of certiorari.

By Mr. Doar:

Well the Williams case didn't decide on interpretation. The Williams case was an alternative either read or interpret. Now certainly for the where states have the requirement of just reading the——

By Judge Brown:

That's a literacy test.

By Mr. Doar:

A literacy test the fact that they provide some alternative for the illiterate seems reasonable.

[fol. 318] By Judge Wisdom:

No, that's a fairly reasonable test that would seem to me.

By Judge Brown:

They might have trouble with peraditiments or actions in — taken or whatever they do in Louisiana.

By Mr. Doar:

Well if that was the situation with respect to illiterates I think that might could properly be cured by a one-judge court. The last thing was the section the good moral character and we have challenged that again on the theory that this is an elevation of the standards particularly because of the fact there is no objective standards for persons to——

By Judge Brown:

You think if the Court brings in that the qualification of reasonableness, reasonably good moral character that that saves it or that the registrar is to act reasonably does that save it?

By Mr. Doar:

No, I do not. I say respectfully that we have a very difficult situation. We will be able to show to the Court a situation in Mississippi where its practically impossible for a registrar to have any subjective standard in determining the qualification of voters.

[fol. 319] By Judge Wisdom:

Are you saying subjective or objective?

By Mr. Doar:

Objective at the present time under the present circumstances. That's all that I have to say on those, sir.

By Judge Brown:

All right, thank you. Now this comes into Number 5 and Mr. Wells are Number 5 and 6 to be separately argued?

By Mr. Wells:

If the Court please, Number 5 Mr. Burgin just wants to make one statement with reference to the severance on behalf of these individual registrars, but he does want to argue this motion to strike or to dismiss the third claim of the complaint which has to do with a statute that our position is *is* not in conflict with anything and then on the motion for separate trial I will attempt to cover it. Mr. Burgin will just want a little time on that. That's a motion actually to strike or motion to dismiss as to the third claim of the complaint on the basis that the statute under attack is not in conflict with anything.

By Judge Cox:

How is that captioned, Mr. Wells?

By Mr. Wells:

If the Court please, that is I think Number 3 Motion on Behalf of All——

[fol. 320] By Judge Cox:

Motion of all Defendants.

By Mr. Wells:

Yes sir, Number 3.

By Judge Cox:

We have taken up 3 Motion of All Defendants. We had an extensive discussion on that one.

By Mr. Wells:

Let's see, if the Court please, I think it was 4 that we took up. Number 3, if the Court please, is to dismiss the third claim that doesn't state a claim of action.

By Judge Cox:

That's my Number 3. I have them a little bit different than you do, captioned Motion of all Defendants.

By Judge Brown:

Now then this motion of defendant W. R. Holmes for severance, motion of defendant W. R. Holmes for separate trial of any allegation which may be alleged in the complaint illegal or discriminatory application; separate motions of the defendants Easley, Smith, Turner, Lamb and Wiggins.

By Mr. Wells:

If the Court please those were prepared by local counsel and that's the reason they are not all included in one.

By Judge Brown:

Are those the ones we are now discussing?

[fol. 321] By Mr. Wells:

Yes sir.

By Judge Brown:

All right, I just wanted to get it clear.

By Mr. Burgin:

May it please the Court, with respect to the motion for individual registrars for severance and changes of venue I would like to say that while I don't care to argue them in detail at this time particularly in view of the evident intention on the part of the State to not press the motion to dismiss on behalf of the State at this time that should the State stay in of course the venue so far as these individual registrars would be sufficient in the Southern District of Mississippi.

By Judge Brown:

Well now I didn't understand Mr. Wells to say what precedent, what he did was suggest with the approval of the Court and counsel that it be carried along with the case because it goes to the merits of the case. In any case it is being carried along with the case.

By Mr. Burgin:

And in view of that situation where the motion for a change of venue is thereby effected we would like for the Court to consider the motion on behalf of the individual registrars for a severance to be in effect a motion for [fol. 322] separate trials of any allegations of discrimination by them in the application of the constitutional and statutory provisions of this State.

By Judge Brown:

Well, now what's to be gained by that assuming that the same three judges were to hear the case.

By Mr. Burgin:

Your Honor, its simply is this that this case as we see it falls into two categories as Mr. Wells will discuss with respect to the course of the trial that the first question is are these constitutional sections and statutes in violation of the Fifteenth Amendment on their face in which event they fall of their own weight or secondly are they unconstitutional because of the discriminatory manner in which they are applied by the defendant registrars.

By Judge Brown:

Then you add to that third one that the proof evidence may show why they are unconstitutional.

By Mr. Burgin:

Well sir, to be frank——

By Judge Brown:

That's their theory, I don't know whether its any good or not.

By Mr. Burgin:

Its their theory with which we heartily disagree sir, [fol. 323] but I would like to point out to the Court that if their complaint falls into those two categories and those two questions are prohibited as we believe it to be that the question as to whether the constitutionality whether these sections are constitutional on their face should be first decided and then go into the question of discriminatory application by the individual registrars and in that respect I would like to point out to the Court that each one of the defendant registrars are separate, independent and have no connection with each other.

By Judge Brown:

But aren't they all agents of the Board of Registration?

By Mr. Burgin:

No sir, they are not.

By Judge Brown:

What's this State Board called that's made up of the Governor?

By Mr. Burgin:

The State Board of Election Commissioners. The Circuit Clerks are elected by the people in each county and the statute provides that the Circuit Clerk shall be the Registrar or shall be appointed as the Registrar by the State Board of Election Commissioners unless he should be unfit and he therefore acts as registrar by statute by virtue of [fol. 324] his election as Circuit Clerk in Lowndes County or Coahoma County or whatever county he is in and he is thereby the registrar and he is the man that applies the tests which are here under attack. Now if those tests are constitutional on their face as we submit that they are then you have got an individual case or question with respect to any one of these defendant registrars has in fact discriminated against negroes in the application of that test.

By Judge Brown:

One of the defendants is the State of Mississippi.

By Mr. Burgin:

Sir?

By Judge Brown:

One of the defendants is the State of Mississippi and the acts of six whether they were in concert or individually might well be good evidence of illegal action on the part of the State.

By Mr. Burgin:

Your Honor, we submit that evidence as to an illegal or discriminatory act on the part of one of these registrars would certainly not be admissible to prove discrimination on the part of any one of the other five and that the ends of justice would indicate and require that if the case is broken into those two sections that a severance or separate trials as to the issue against the individual registrars should [fol. 325] be granted because these registrars have other duties and other vital and important duties to perform in their respective counties. As I am sure the members of this Court know they are Clerks of the Circuit Court and the proper conduct of the judicial processes of the Circuit Courts which is a court of general trial jurisdiction other than equity.

By Judge Brown:

But these judges also have some other duties to perform. I can't see the sense of a trial before the Court without a jury that has to hear substantially a repetition of evidence six different times when its a question of whether it contaminates us. Now if its going to contaminate us then its going to contaminate us whether we hear them during six separate weeks or hear them in one series of trials.

By Mr. Burgin:

Your Honor, we submit that under Rule 42b that it is within the sound discretion of this Court to grant separate trials where undue hardship and injustice might result.

By Judge Wisdom:

Excuse me. Does the Central Board of Elections have any authority over the registrars once they are elected?

By Mr. Burgin:

They do not sir.

By Judge Wisdom:

No such things as regulations uniform for the state?

[fol. 326] By Mr. Burgin:

The statute provides that the State Board of Election Commissioners shall adopt a standard form of application and the statute prescribes the form and what it shall contain. They adopt that and distribute it, but they have no supervision or control whatsoever over the manner in which any individual registrar interprets or administers the test that's set forth in that application. They have no control whatsoever over the what he does with the application after it is taken.

By Judge Wisdom.

So that in effect each registrar determines for himself the extent to which he is complying with the statute.

By Mr. Burgin:

Your Honor, I would think that each registrar having taken an oath to abide by the laws of the State——

By Judge Wisdom:

No, no, I mean to say that they have no authority over the registrar to see whether or not in fact he is complying.

By Mr. Burgin:

Very definitely, sir, there is an authority. The County Board of Election Commissioners hears appeals de novo from any adverse decision that may be taken by any applicant from the county registrar.

[fol. 327] By Judge Wisdom:

Maybe I didn't make my question plain. There is no central state authority?

By Mr. Burgin:

No sir, and then should the County Election Commissioners fail to satisfy either party they appeal to the courts, so we feel very definitely that to require these registrars particularly from the Northern District to come down here and sit for the long period of time that I personally anticipate that a trial of this case on the merits will take if all of them are left in here——

By Judge Brown:

Of course the Court has great flexibility I think in meeting that practical problem and I think it ought to by establishing ground rules when the case gets started saying that with respect to the individual actions these registrars they would be taken up in this order and no evidence will be allowed during the absence of the other five while one is on trial. Its done in condemnation cases, its done in a lots of ways.

By Mr. Burgin:

Your Honor, to the extent that that testimony is admitted into the same case without objection we think that might present a serious question.

[fol. 328] By Judge Brown:

I can't see how it would be a problem and I can't understand why we should come back and listen to six different cases six different times when we can hear them at one time.

By Mr. Burgin:

I might offer one example and that would be simply this that no testimony with respect to what took place in Coahoma County would be admissible against the Clerk in Lowndes County.

By Judge Wisdom:

But it might all be admissible to show how the statute operates.

By Mr. Burgin:

Your Honor, that would be on your first question.

By Judge Brown:

Unfortunately, there are a lot of cases in this case and that's just the nature of our life today.

By Mr. Burgin:

And that, sir, is our suggestion by this motion that in order to prevent undue delay and inconvenience and expense and harassment to the witnesses and to the parties who have important duties to perform that it be broken down into the separate cases that it contains for the best benefit of all parties involved and to avoid delay in disposing of it. I didn't mean frankly to take that much time on that question.

[fol. 329] By Judge Brown:

Well, we done it for you.

By Mr. Burgin:

Now it is a matter that my individual client who is a man up there trying to make a living feels very strongly about. He doesn't have the time or the money or the finances to come down here and go into a lengthy thing when he is not personally involved except to one portion of it.

By Judge Wisdom:

I should think the lawyers would be able to work out that that would avoid the necessity——

By Judge Brown:

I think your point is a very valid one in terms of practical equities of the thing and the Court must take whatever steps

the development of the case indicates to see that there is not undue hardship and expense or interference with these officials of the State and the County Government, but I agree with Judge Wisdom I think that when we get to that point that through a pre-trial or similar mechanism a way can be found that will not prejudice your people and will not impose as I am sure you don't want to impose an unnecessary added trial on the Court.

ORAL ARGUMENT ON DEFENDANTS' MOTION TO DISMISS THE THIRD CLAIM FOR FAILURE TO STATE A CAUSE OF ACTION

By Mr. Burgin:

With the Court's permission I would like to consider very briefly the defendants motion to dismiss the third claim [fol. 330] for failure to state a cause of action. I feel certain that the Court is familiar with the third claim but briefly stated it sets forth that in 1955 the Mississippi Legislature pursuant to Section 244 passed a statute specifying that the election commissioners should adopt a written application from for to be used by applicants for registration and that a part of that section adopted in 1955 as Section 3209.6 of the Mississippi Code required that the written application of the applicant be retained as a permanent record. Subsequently on April 15th of 1960 the Legislature of the State of Mississippi amended that section and it deleted the sentence that required that the application be kept as a permanent record and adopted a provision which provides provided that if no appeal be taken from the either of the registration of the applicant or the rejection of that applicant that after the appeal has expired that the registrar is not required to retain or preserve the application. Now in the third claim of this bill the plaintiff seeks to have this Court adjudicate that amendment to the statute to be in violation or contrary and in conflict with Section 1974 of the Civil Rights Act which was not passed until the 8th of May, 1960, some three weeks after the Mississippi Legislature amended its policy.

By Judge Brown:

Now are you saying that the Missisippi statute is so palpably unconstitutional that a claim that there is a

[fol. 331] serious question which lies at the threshhold of a three-judge case is simple and frivolous?

By Mr. Burgin:

I am by no means saying that, Your Honor. I am saying that the statute is evidence on its face that it is permissive only. It does not authorize or direct the destruction of any application by any clerk and is simply declaratory of the policy of the State of Mississippi that so far as the State is concerned its not necessary to maintain these registration applications on file.

By Judge Brown:

Does Article 6 of the Constitution permit the State of Mississippi to say that those records which the Congress says must be maintained need not necessarily be maintained?

By Mr. Burgin:

No sir, but Article 6 of the Federal Constitution as we interpret it sir does not require the State of Mississippi to anticipate what laws are going to be passed in the future by the Congress of the United States and we certainly while we question the authority of the Congress as in 1974 or Title 3 of the Civil Rights Act to impost a duty on a state official still we do not question the efficacy of the Title 3 in the record keeping portion.

By Judge Wisdom:

Now let me, I am not sure I understand you. Certainly [fol. 332] that would indicate or might indicate the constitutionality of the Mississippi statute or rather the lack of conflict with the supremacy clause prior to the adoption of the Civil Rights Act. After the adoption of the civil rights act there is no question in your mind now the registrars must keep those records.

By Mr. Burgin:

There is no question to the extent required by Title 3 of the civil rights act they must keep those records.

By Judge Wisdom:

That's correct. That's what I wanted to get clear in my mind because I was not sure whether you thought whether your argument was having been adopted at a time when there was no conflict——

By Mr. Burgin:

To that extent no, but we do take the position that the State of Mississippi has the right to announce state policy that its not necessary to retain those records which of course was subsequently effected by the passage of the civil rights act and now they have to keep certain records for 22 months.

By Judge Brown:

Now you speak for these six, but here's a general statute applies to all the registrars throughout the state and it seems to me what you are saying is a strong indication that really there is no real difference between the defendants and the plaintiff on this statute. You both agree to the [fol. 333] extent that the federal statute covers is supreme and I think that since there are registrars who are not parties that the government would be entitled to a declaration at lease that that is so.

By Mr. Burgin:

May it please the Court, I would like to point out in this third claim they ask this court to declare that section to be unconstitutional in its entirety. They don't limit it. They seek to, they say that the purpose of the statute was to frustrate federal protection in Mississippi.

By Judge Brown:

Well, there again they say in their complaint and you objected because they gave you too much information but it was enough to indicate to us that they are going to prove that at the very time the Congress was considering the Civil Rights Act of 1957 this law was passed in Mississippi. Now maybe its just a coincidence; maybe it was done in anticipation. If that's so then maybe that presents a different question.

By Mr. Burgin:

We submit this, sir, that the fact as to whether these records after the 22 month period expires that's required to be kept by the Civil Rights Act may be destroyed because the policy of the State of Mississippi is that it has no objection to them being destroyed, cannot violate Section 1971a which deals with the right to vote because the ap- [fol. 334] plications have already been approved or rejected and the time of appeal has expired and the 22 months has expired and yet he wants the plaintiff comes in here and asks this court to strike down the valid declaration of the State as to its policy with respect to keeping these applications even though——

By Judge Brown:

The longer you talk the more convincing you make it to me that there is a real problem here about the extent to which there is any conflict. Now if there is a real problem it neeessarily poses a constitutional question because of the supremacy clause then there is a need for a determination by a three-judge court and it has to be done not on a motion to dismiss that you make but on the hearing on the merits. We may well agree with you but I don't think we can do so at the present time.

By Mr. Burgin:

Your Honor, our position is simply this that we fail to see any conflict as a matter of law between a permissive state statute which admittedly is subsequently affected by passage of a federal statute to a certain extent but that the relief sought here under this complaint is not authorized and is not a proper subject for the three-judge court. That simply is our postion on it, sir.

By Judge Brown:

Now I want to ask the Government if they think it [fol. 335] would be better to wait their response until after we hear from Mr. Wells on the last motion.

By Mr. Doar:

Yes sir.

By Judge Brown:

Does that meet with your approval too, Mr. Wells? We will hear now Number 6 is a motion for separate trial of claim headed Motion of Defendants for Separate Trial of Claims.

By Mr. Wells:

If the Court please, before I go into that motion if I may clarify what seems to be some confusion in connection with this third claim of a possibility of a problem. The position that we take on that is this on that third claim that there is no conflict between that state statute and any part of the civil rights act because prior to April, prior to April of '60 these applications had to do with all elections both state, federal and all and they had to be kept as a permanent record forever. The legislature came along and said you don't have to keep them permanently, you have got to keep them until that man's right of appeal is over and if he has not taken an appeal within the time then you don't have to keep them. Of course if he does you do. Now following that later on the civil rights act was passed in which the Congress said to all registrars all data pertaining to any federal election you must keep for 22 months. [fol. 336] There is no contention whatsoever by anybody in Mississippi that that act of Congress isn't binding on every registrar in Mississippi and that the act in the State Legislature gives him no such authority to violate that act and no attempt made to do it.

By Judge Brown:

This may well be one that could go off on summary judgment.

By Mr. Wells:

And I just wanted to make that plain there is no conflict and no contention has got anything to do with that.

By Judge Brown:

My difference with Mr. Burgin during his argument was purely on procedure, here is a motion to dismiss, I think its quite different.

By Mr. Wells:

Now going, if the Court please, to our motion for separate trials as this Court well knows that under Rule 42b the question of separate trials is a matter in the sound discretion of the Court. Rule 42a provides for the consolidation of certain matters that perhaps could not have been consolidated before 42a. 42b provides the situation to separate these claims for the convenience of the Court in order to eliminate prejudice and in the orderly administration of justice and I think that probably the language that is used in the brief that was filed in the Collins v. [fol. 337] Metro Goldwyn pictures fits this situation best. When the natural course of trial indicates that one claim can be disposed of quickly and summarily while the other will require considerable trial separation should be possible except when those facts when they are so intrinsically interwoven that they can't be separated. Now let's see what the picture is here, if the Court please. We have got on the one hand the Government saying that two or three sections or two present sections under the Mississippi Constitution and if we include 244 before it was amended three and a package of statutes were conceived in sin, that the climate surrounding their passage was such and the language of the sections themselves is such as to make them unconstitutional on their face and that they propose to present to this Court certain evidence to show the circumstances under which they were passed, the climate existing when they were passed, so that this Court can say that this section, this section and this section is unconstitutional on its face because of the climate in which it was passed and because in some of the statutes as they claim because of the language being so loose and they say the statutes themselves are unconstitutional on their face. Now that presents one problem. That presents some evidence to show what the climate was. This Court might well hold that this section is unconstitutional on its face, this one is not. This statute is unconstitutional on its face because it shows [fol. 338] that it was conceived and passed in sin; this one not. Should the Court do that then we move next to the

Government's claim that these which the Court have said are constitutional on their face the Government says then let us present to you another type of proof showing how they are administered to show that they are unconstitutional by virtue of their application. The Court would then be in a position to limit and define the proof and say all right we have said this section or this statute is unconstitutional on its face so we want to hear no evidence about its application because its out the window. In other words the Court can control this evidence whereas if you lump it together on the question of the evidence about the climate in which it was passed to determine first is it unconstitutional on its face then go into its application and dovetail in we get into a myriad of testimony. If the Government succeeds, if the Court please, in its proposition that these sections of the Mississippi Constitution and these statutes of which they complain are unconstitutional on their face because not only of their wording but because of the climate in which they were passed the lawsuit is over and you don't need all of this evidence about the application. The whole thing is out the window so we say that for the convenience of this Court and in order to not bring about a confused situation that the Court would be warranted and it would be the proper procedure and it would be helpful to keep [fol. 339] these issues in their proper perspective that this Court would say we are going to have a trial on the matter of the constitutionality of these statutes on their face and we will receive from you the evidence to show the background of how they were passed, the climate in which they were passed, the situation that existed to see if they were passed with evil intent and we will decide that question. If we decide that question in favor of you, Mr. Plaintiff, then we have eliminated a lot of testimony. If we decide it against you then we will give you the opportunity to show the other side of it. If we say some of them are valid on their face and some of them are not then we can hear that testimony.

By Judge Brown:

If I understand the Government's theory there is a kind of a correlary in this; not only does evidence bear upon circumstances under which the statute was passed indicat-

ing its constitutionality on its face but its unconstitutionality on its face is demonstrated by the manner in which it is actually being used. Now that's different from a charge of unconstitutional application. Its applying proof to show the Court why these fears that one could conjure up really exist. In other words here let me see if I can because this is the point that bothers me in the case this business under 241a under good moral character. Well as judge we could sit back and say well this is obviously too broad and too loose because just think of all the things that a registrar [fol. 340] might be able to say if he disqualified a man because he didn't have good moral character, didn't go to the right church, didn't belong to the right clubs, drank, he smoked, he gambles or whatever it is, but the Government's theory doesn't want to leave us in the quandary of our imagination. They want to show by actual facts in the mechanical handling of registration in Mississippi what goes on so that the Court will see in fact how these ostensibly valid provisions are capable of real discrimination. Now it seems to that when if there is a separate theory there at all if I have stated it correctly then it lapses over into this other thing so much that you ought to hear the evidence as one.

By Mr. Wells:

If the Court please, if that's their theory that's not the way their bill is drawn. They set out in this bill just this; that here's the circumstances that existed when this statute was passed and the statute has no measuring rod and on its face and the circumstances under which it was passed it is unconstitutional period. Then they go further in certain other parts and saying that these clerks are using these statutes to discriminate. There is a clear cut separation of difference here that we can become confused with and that the trial on the one hand of the constitutionality of these statutes and these sections on their face, not just reading them, but the atmosphere under which they were passed and the language of them, I am thinking more about the statutes now than I am the con- [fol. 341] stitutional application, if the Court please, because they complain in there about the fact that they leave too much discretion and then on the other hand they get

off and say now these things have been used to discriminate. Now one other thing, if the Court please, that I had understood that Your Honor was very much concerned with and that is some of what is asked this three-judge court is asked to do in addition to the declaring of these statutes unconstitutional and how far this Court ought to go.

By Judge Brown:

Not how far we ought to go but how far not in relief a decision but how far a three-judge court as distinguished from a one-judge court can go under the statute.

By Mr. Wells:

Yes sir. Now you are asked to declare these sections unconstitutional and to issue an injunction enjoining the further application or use of any of them or all of them of those that are declared unconstitutional put them out of business as a result of this section and this section and this section that it cannot be used any more. In other words to say actually what they are asking that all of the laws of Mississippi pertaining to registration go out the window and we start over again. Now that is the proper function of a three-judge court to act on the constitutionality of a section of a constitution or a statute and on de-
[fol. 342] claring it to be unconstitutional enjoin those people whose authority it is to operate under it from proceeding further in enforcing it and that is the function and the primary function of a three-judge court, but the plaintiff in this case is asking you to go further to make a finding that these registrars have discriminated in the application of the statutes; to go further and find that that discrimination is pursuant to a pattern or practice. Now let's see if that is the proper province of a three-judge court.

By Judge Brown:

Well, now I don't think you need to argue that. I think clearly that it is, it is for a single judge ordinarily, but now this is where the fly is in this ointment. If I read this Limegrowers v. Avocado business in 4 2d and you all are familiar with it it undertakes to say when a

three-judge court must be convened and if it must be convened then it has not only the power but the duty to decide all the questions both local, state and federal laws that are incident to it.

By Mr. Wells:

I agree, if the Court please, that once this Court is properly convened it has the right, it has the authority to decide all the collateral questions. There is no question about that, but now let's see if in this case in the exercise of its discretion the Court should do this and let me point [fol. 343] out what this Court is getting into.

By Judge Brown:

Well, now while you are arguing that let me give you something more to worry about. It isn't quite as simple as saying well we will put this responsibility on the one judge because that's where it is ordinarily going to be, but the right of appeal you see is quite different and I wonder really and I wish you would address yourself to this whether we have any discretion or whether we are not obligated to go ahead and hear the whole case because the difference in review is really very marked. One is through the Court of Appeals with certiorari maybe; the other is a direct appeal as a matter of right to the Supreme Court.

By Mr. Wells:

Before I get to that let me cover this, if the Court please, and show you here's what happens. If this Court makes a finding that these registrars have discriminated against somebody and that its according to a pattern and practice then what next. You have become registrars, a Court of Registry, because here's what happens. Here's what happens. If the Court finds such pattern or practice any person of such race resident within the affected area, that's going to mean Mississippi, shall for one year and thereafter until the Court subsequently finds that such pattern or practice has ceased be entitled upon his application therefor to the [fol. 344] Court to an order declaring him qualified to vote upon proof at any such election as he is qualified under state law to vote and he has since such finding been deprived

of the right to register and so forth or and then he applies to this Court for orders and the Court is constantly giving orders or the Court can appoint a referee for the area affected and of course the area is Mississippi and this person applies to the referee and the referee has got to certify that to the court, to this Court and then the Attorney General has got to be given notice and then they can come in and have a hearing on that referee's report to this Court. The Court can't appoint a referee and forget it and go off because the referee has got to report to this Court on each individual case and there's a right to protest in contact for this Court, so this Three-Judge Court will be constantly acting in that capacity until such time and not until such time——

By Judge Wisdom:

But we, I don't follow that at all because it seems to me that at anytime we could if we chose pass that chore on to the local judge, to the district judge sitting alone.

By Mr. Wells:

If the Court please, the Court that appoints the referee is the one the referee reports to.

By Judge Wisdom:

Well, what is the Court?

[fol. 345] By Mr. Wells:

This Three-Judge Court if you go that far.

By Judge Brown:

That's a nice question.

By Mr. Wells:

I say to this Court frankly and I will be perfectly frank with——

By Judge Brown:

You would have our company for a long time.

By Mr. Wells:

I do not know what this the right this Court has. I do say this. I think this Court is still a court of equity and its been my observation that courts of equity have rather broad powers sometimes that are not actually written in the statute, but I believe that if this Court stopped with the question of the constitutionality and said your relief on your question of your pattern and practice being limited to six counties in Mississippi anyway because those are the only six counties that you have named——

By Judge Brown:

Seems to me this is a thing that has not been adequately briefed this specific question about the power of a three-judge court properly constituted to her a meritorous attack on the constitutionality of statutes and its right on a determination of that issue to surrender to the local district [fol. 346] judge those phases which would ordinarily be for a single judge but which it might if it wanted to that is within its discretion keep for itself and I think we would welcome briefs on that phase of it, but I am about to say I think when Mr. Doar gets through I believe this is a little premature anyway.

By Mr. Wells:

We will go into that every way we can but I do want to say to the Court frankly and I cannot help but feel that we would be in better order for the benefit of the decision of this Court, two of the members of this panel as I had an occasion where we lumped civil and criminal contempt it was pretty hard keeping separate which applied to which, but we have got a situation some of this evidence will apply to the question of whether these matters are constitutional on their face and some of them will apply as to whether or not they are unconstitutional as to their application and in any event when we get into the question, if the Court please, of pattern and practice lump that in with it too its going to mean pattern or practice not in six counties but if the State of Mississippi as long as its a party here and the State Election Commission is a party here they are not going we are not certainly going to be limited to these

six counties and on pattern and practice I would feel that we would have a right, for instance here is an example, if the Court please, on the question of pattern and practice to bring 1,500 negroes from Hinds County in here [fol. 347] dating back from way back yonder some 25 years ago down to the present time to show that there has been no discrimination whatsoever starting back the first I remember would be back in the early teens when I remember they were registering to vote and bring them down here to show the pattern and practice has been the other way. This thing could amount to enormous proportions and that's the reason that we feel that this Court should set aside that phase of this thing first and then say here's what it is about these and then we could regulate the testimony on the balance.

By Judge Brown:

Well, I think we have your position pretty well, Mr. Wells, and I do want to hear from the Government and we are going to try we have to leave this evening and we do want to have an opportunity to confer and I hope to maybe confer with counsel informally in chambers if we get finished in time so I think we will just hear from Mr. Doar now. You have had about your say don't you think, Mr. Wells.

By Mr. Doar:

If the Court please, with respect to the argument about changing the law with respect to preservation of records not being inconsistent with Title 3 of the 1960 Act we feel that its very inconsistent; after all we live in a real world and the real world is that there is penalties for the volations of preserving the records and if you have a statute that on [fol. 348] its or on the State of Mississippi books providing that they need not keep the records the registrars, the registrars, not Mr. Wells, but individual registrars will say that that is what they were going by and taking the entire history of this statute, when it was passed, and when it was amended in relation to when the 1960 Civil Rights Federal Act was passed with respect to preservation of records indicates quite clearly to me that it was not in complete disagreement——

By Judge Brown:

How long you think in Mississippi they have to preserve them under the '57 and '60 acts.

By Mr. Doar:

They have to preserve the registration records forever.

By Judge Brown:

Forever?

By Mr. Doar:

Sure, because the registration here is permanent.

By Judge Brown:

Well 22 months, we are not talking about 22 months.

By Mr. Doar:

No, the 22 months applies to ballots but——

By Judge Wisdom:

I beg your pardon.

[fol. 349] By Mr. Doar:

The 22 months applies to ballots at elections but the registration since registration is permanent in Mississippi that particular persons registered in 1960 could vote in 1970, therefore, one of the acts that he performed to vote in 1970 was done in 1960 and they have to preserve it for 22 months after the 1970 election.

By Judge Wisdom:

Well I don't see where, I would see where they would have to preserve the records of those who are permanently registered. I don't know it necessarily follows with regard to those who were rejected for permanent registration. They might have to keep those records for 22 months.

By Mr. Doar:

Well, I don't think so, Your Honor. I think that all of the records would have to be preserved because the only way you could determine who was fairly registered at an election would be to look at both the accepted and rejected records.

By Judge Wisdom:

It may be that Congress meant it as to such records as to those who were rejected and also as to the records of the ballots it was necessary to keep them for only 22 months, but of course it goes without saying that in any permanent registration system whatever records relate to the permanent registration must be kept permanently, however [fol. 350] that's a minor point and I don't want to at this late hour in the afternoon let's not get entangled in that difficulty.

By Mr. Doar:

All right, Your Honor. The other point I want to make is in response to Mr. Wells' argument that there should be a separate trial of claims in this case. The difficulty with Mr. Wells' argument is that there isn't any separate claims. Our claim is that the statutes are unconstitutional. The proof which we intend to offer part of that proof goes to how the statutes have been used. Now in the Vermilliono case there was proof as to what that particular statute did, it gerrymandered all negroes out of Tuskegee and it gerrymandered or permitted all whites to stay in.

By Judge Brown:

Do you really propose to try a pattern or practice case?

By Mr. Doar:

Only with respect not to try a pattern or practice case but we propose to claim that this entire group of laws the entire statutes in Mississippi as they have been passed constitute a pattern and practice.

By Judge Wisdom:

Its news to me this is not a pattern and practice case in the sense in which that term is used in the Civil Rights Act.

[fol. 351] By Mr. Doar:

That's the question that has to sometime be determined in this case but its not determined now.

By Judge Wisdom:

No, but I mean so far as the constitutionality of it is concerned the pattern and practice relates or is being used only for the purpose of showing how the Mississippi statutes operate.

By Mr. Doar:

That's right. Now the question, Your Honor, of whether or not there has been systematic discrimination as a result of these statutes triggers this 1960 act hasn't been briefed. We haven't argued that point wouldn't come up until after the hearing is over, but we do propose to offer proof as to how the statutes have been used as relevant proof——

By Judge Brown:

Now more specifically with respect to each of these six registrars would your testimony be any different in this case from what it would be in a suit against each one of them individually separately before a single judge?

By Mr. Doar:

It wouldn't be any different with respect to the records because we would offer it if the records were there we would offer all the records because that would be the best proof of how the statute had been used and we would see [fol. 352] nothing to be gained by offering just part of the records. If some of the records are destroyed then we would offer some oral testimony or testimony by deposition and we would not be as extensive as we would if we were trying a case under 1971a and some matters that we couldn't go into at all.

By Judge Brown:

Now your prayer doesn't seek a determination that there is a pattern and practice does it?

By Mr. Doar:

Yes, it does.

By Judge Brown:

It does?

By Mr. Doar:

Yes sir, it does.

By Judge Cox:

I want to ask you about that. You do seek in the prayer of the complaint for a finding by the Court under paragraph e of Section 1971 that there was a pattern or practice with respect to these six registrars.

By Mr. Doar:

That's right, not only with respect to the six registrars but we contend that that pattern or practice could be found with respect to the entire state.

By Judge Cox:

But you ask specifically with respect to that and then [fol. 353] it becomes the duty mandatorily of for this Court if that prayer is granted to do certain things under paragraph e.

By Mr. Doar:

That's the question whether or not, that's the question whether or not if the Court makes a finding of systematic discrimination its not what every registrar does, its systematic discrimination because of these group of statutes the fact that they were passed. In other words in the legislative history in the 1957 law there's legislative history to show that a law can constitute a pattern or practice.

By Judge Cox:

You are not saying that that phrase that you just happened to employ it, that you deliberately picked that phrase pattern and practice out of the statute didn't you?

By Mr. Doar:

Yes, we did certainly, but the question has not been briefed and its a question this Court has to decide as to whether or not that finding would trigger the 1960 Civil Rights Act, that's the question.

By Judge Cox:

Congress says so doesn't it.

By Mr. Doar:

Pardon?

[fol. 354] By Judge Cox:

This act itself says that it does.

By Mr. Doar:

That's right, that's right, it does.

By Judge Brown:

Well Now I am groping here to try to find a practical solution to a very troublesome problem. It seems to me tentatively at least that substantial questions involving constitutionality of the Constitution of Mississippi and the statutes is presented requiring a three-judge court and that the Government is entitled at least to offer this evidence which is going to either explain or show why or wherein and that it would partake of the same kind of testimony but not necessarily the same quantity of a pattern and practice civil rights voting case. One is strictly the function of a single-judge court. One is the function of a three-judge court. Now is there any kind of a way by which without restricting the Government in full development of its main theory there can be some kind of a limitation put on it so we are not unwittingly dragged into a thing which ought best to be left to a single judge. Now is that stated.

By Mr. Doar:

That states it, yes, Your Honor, and I would think that the way to do that would be for the Court to rule on the types of evidence that would be admissible. For example, [fol. 355] if a registrar said to negro citizens you can't register at all I would think that that would not be relevant proof in this case. If the Court has got to decide how much proof on whether or not the statute is given to whites and not given to negroes whether proof on selection is relevant, whether proof on assistance is relevant, whether proof on grading is relevant and we think a certain amount of proof on each one of those things is relevant but it goes no further than that with respect to discrimination.

By Judge Wisdom:

Mr. Doar, is it not a fact that as a practical matter in some of these cases which were three-judge cases after the three-judge court passed on the constitutional question the three-judge court bowed out and turned it over turned over the proceeding to a single judge who then passed on questions relating to the ordinary voters of pattern of discrimination in voting cases. I have reference to two or three cases in North Louisiana, certainly the Manny case that's exactly what happened.

By Mr. Doar:

That is true.

By Judge Wisdom:

Then turned after the three-judge court passed on the constitutionality we turned it over the case was then turned over to the single judge, in that case I think it was Judge [fol. 356] Dawkins.

By Mr. Doar:

Judge Dawkins and Judge Hunter and they proceeded under the 197——

By Judge Wisdom:

Now has this been true in other cases.

By Mr. Doar:

No sir, because we have never had another case involving a three-judge court in a 1971a case——

By Judge Wisdom:

Well it seems to all of us that there would be no point in keeping in having a three-judge court sit on those cases that came to the court after the finding of the pattern of discrimination.

By Mr. Doar:

We don't think there is either. We don't think there is any need for that, we don't think its required.

By Judge Brown:

In other words it would be someone like Judge Cox sitting as a single judge making the decision in a pattern or practice and Judge Clayton comes down by designation and Judge Mize comes up he is still the court.

By Judge Wisdom:

That was the case there because we had both Hunter and Dawkins sitting.

[fol. 357] By Mr. Doar:

That's exactly what happened in North Louisiana.

By Judge Brown:

Now do you think that maybe this is one motion that turns out we may be a little premature on, that we ought to discover a little bit?

By Mr. Doar:

Well I think it is, Your Honor, and its also a question we are going to have to be confined to the use of these statutes, there's a lot of other types of discrimination that you can't go into at all on proof that might show a pattern or practice, but we are confined to just these statutes and

these particular statutes we are confined to are the interpretation, tests and good moral character test and those particular proof there is going to be a lot of statistical proof because that's a basis for the freeze and then we have got to show some proof to how the statutes have been used to discriminate and we will select that from various illustrations of that throughout the state, not necessarily from these six counties but we picked these counties because they are representative but on how this statute is used we would might offer from a number of counties and the question would be as to that whether its admissible.

By Judge Brown:

In other words the presence of these six particular regis- [fol. 358] trars is just to have some live bodies who have official duties to make a case or controversy.

By Mr. Doar:

That's one thing and the second that the defendants because of the argument that the defendants ought to carry with the case because we can't properly sue the State of Mississippi.

By Judge Brown:

In other words you could have maintained it against all these defendants, you could have maintained it against any one registrar?

By Mr. Doar:

Yes, we could have, we could have maintained it against all of them and we could have sued all 85.

By Judge Brown:

Even without including pattern or practice?

By Mr. Doar:

That's right, on the statutes, just on the statutes.

By Judge Brown:

Now this concludes all of those that are listed but there is a Governmer[illegible]otion for Rule 34 motion to produce. I understood fr[illegible]r. Wells and I don't want to overstate it that what the Court rules as to the scope of the complaint will determine the right of the Government to this motion to produce and that they do not oppose the granting but limit it to the scope of the complaint as finally fixed by the [fol. 359] Court on the motions that have been heard heretofore today.

By Mr. Wells:

And we take this position, if the Court please, of course the Court has before if the question of more definite statement as to certain parts of it and our position has been and has been in the district courts that if we are entitled to a more definite statement on any part of it then you do not have a good cause of action until that more definite statement has been furnished and they would not be entitled to their discovery until they had complied with the order for the more definite statement. When they have done that of course they are then entitled as you say within the scope——

By Judge Brown:

Without intimating any ruling if the Court overrules the motion to make more definite and to strike do you see any reason why the motion of the Government for production under Rule 34 ought not now to be granted as a matter of course?

By Mr. Wells:

Within the scope of what is before the Court in this case, if the Court please. I wish I did have but I can't think of a good argument against it.

By Judge Brown:

Well it goes back a long long way. Is there any other matter now that needs to be presented? The court would like to have the counsel just remain informal around the

[fol. 360] Court House for the next half hour if its possible to announce some rulings we would like to do it. We don't know that we can.

(At which time the hearing of this cause recessed until 3:45 P.M. and was taken up in the Hearing Room when the following proceedings were had and entered of record.)

By Judge Brown:

Gentlemen, we thought as much as possible we should announce the rulings that we have been able to make.

By Mr. Shands:

We wanted to dictate this into the record before the Court announced its ruling.

By Judge Brown:

You can do that. Mr. Wells spoke to us before Judge Wisdom left.

By Mr. Shands:

The State of Mississippi and all defendants in this case wish to clarify and make definite our positions on these points:

1. The sections of the Mississippi Constitution and all statutes challenged in this case both as originally enacted and as later amended are valid on their face as will be seen from a reading and study of their terms.

No proof or evidence having to do with any purpose, motive, intent or climate is admissible or pertinent to the determination as to the validity or constitutionality of said [fol. 361] constitutional provisions and statutes.

2. Proof of any discriminatory actions taken by any registrar cannot affect the validity of any constitutional or statutory provisions valid on its face.

3. This Court cannot receive any evidence or act or any alleged evidence or act alleged to constitute any pattern or practice of discrimination.

4. No defendant, even one who has permitted inspection of his records, admits or concedes that Section 1974 of Title 42USCA is valid or constitutional.

By Judge Brown:

May I ask a question on that last. It seems to me that in view of that reservation which you are certainly entitled to make that it acts now there is genuine substance to the third claim.

By Mr. Shands:

No sir, we don't think so.

By Judge Brown:

That is pertinent to your general position, not with respect to any particular motion, will you say that applies.

By Mr. Shands:

This is our general, we want nothing in this record to be in anyway any modification or detraction from these points that we have put in the record.

[fols. 362-363] By Judge Brown:

This is a thing the Court will have to take along with the case.

(At this point the Court began to make its ruling, which was previously transcribed and filed.)

Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 364] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3312

ANSWER OF DEFENDANT, T. E. WIGGINS—Filed May 13, 1963

Comes now T. E. Wiggins, Circuit Clerk and Registrar of Lowndes County, Mississippi, hereinafter referred to as This Defendant, and files this answer to the complaint heretofore filed in the above styled cause, and answering says:

First Defense

The complaint fails to state a cause of action upon which any relief could be granted against this defendant.

[fol. 365] Second Defense

This Court as composed lacks jurisdiction over the subject matter of this action and over this Defendant.

Third Defense

Answer to First Claim

1. This Defendant denies that this court has jurisdiction of this action.

2. This Defendant denies the averments of Paragraph 2 of the Complaint, and would state that the State of Mississippi is not a proper party to this action and cannot be joined as a party Defendant for the reason that Section 601 (b) of the Civil Rights Act of 1960 is unconstitutional on its face.

3. This Defendant adinits that Ross R. Barnett, Joe T. Patterson and Heber A. Ladner are members of the Mississippi State Board of Election Commissioners by virtue of their official positions as Governor, Attorney General and Secretary of State, respectively; and admits that the offices of said Defendants are in the State Capitol, Jackson, Mississippi, but denies that the State Board of Election Commissioners is an agency of the Defendant State of Mississippi.

4. This Defendant admits the averments of Paragraph 4 of the complaint.

5. This Defendant admits the averments of Paragraph 5 of the complaint.

6. This Defendant admits the averments of Paragraph 6 of the complaint.

7. This Defendant admits the averments of Paragraph 7 of the complaint.

[fol. 366] 8. This Defendant admits the averments of Paragraph 8 of the complaint.

9. This Defendant admits the averments of Paragraph 9 of the complaint.

10. This Defendant denies the averments of Paragraph 10 of the complaint, and would show that as Registrar of Voters, he performed the duties imposed upon him by the Statute Law of the State of Mississippi.

11. This Defendant denies the averments of Paragraph 11 of the complaint.

12. This Defendant denies the averments of Paragraph 12 of the complaint, which refer to Lowndes County, Mississippi. Upon information and belief, he also denies the averments of said Paragraph, which refer to the counties of Amite, Coahoma, Claiborne, Le Flore, and Pike.

13. This Defendant denies the averments of Paragraph 13 of the Complaint.

14. This Defendant denies the averments of Paragraph 14 of the Complaint.

15. This Defendant denies the averments of Paragraph 15 of the Complaint.

16. This Defendant denies the averments of Paragraph 16 of the complaint, except that he admits that a State Constitution was adopted in Mississippi in 1890.

17. This Defendant denies the averments of Paragraph 17 except that this Defendant admits that the Mississippi Constitution of 1890 contains Section 244, and asserts that said Section itself is the best evidence of its content.

[fol. 367] 18. This Defendant admits the averments of Paragraph 18 of the complaint, except that he denies that registration in Mississippi is permanent.

19. This Defendant denies the averments of Paragraph 19 of the complaint.

20. This Defendant is without knowledge or information

sufficient to form a belief as to the truth of the averments in Paragraph 20 of the complaint.

21. This Defendant denies the averments of Paragraph 21 of the Complaint and each of the sub-paragraphs thereunder.

22. This Defendant admits that the United States Court of Appeals for the Fifth Circuit rendered a decision in June 1951, with reference to Section 244 of the Mississippi Constitution of 1890, but denies that the Plaintiff has correctly stated the meaning of said decision in Paragraph 22 of the complaint.

23. This Defendant admits the averments of Paragraph 23 of the complaint, and would show that said averments would also apply to the White race.

24. This Defendant admits the averments of Paragraph 24 of the complaint.

25. This Defendant denies that the Legislature in Mississippi did not meet in 1953. He admits, however, that the Mississippi Legislature in 1954 did adopt a resolution to amend Section 244 of the Mississippi Constitution of 1890. He denies, however, that the Plaintiff has stated a correct interpretation of said amendment, and would show that this court can take judicial notice of the amendment to the Constitution, and would show that same speaks for itself. [fol. 368] 26. This Defendant is not advised as to the truth of the averments of Paragraph 26 of the complaint, and does not have sufficient information on which to form a belief as to the truth of said averments, and therefore denies same.

27. This Defendant denies the averments of Paragraph 27 of the complaint.

28. This Defendant denies the averments of Paragraph 28 of the complaint, except that he admits that the Mississippi Legislature created a Legal Educational Advisory Committee.

29. This Defendant denies that in 1954 the Supreme Court declared that state operation of racially segregated schools was unconstitutional. As to the remaining averments contained in this paragraph having to do with the formation of citizens councils, their purpose and their

projects, this Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, deny the same.

30. This Defendant admits that the Legislature of the State of Mississippi met in extraordinary session in September, 1954. He would show, however, that the proclamation of the Governor convening such is a public document, and speaks for itself.

31. This Defendant admits the averments of Paragraph 31 except that this Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments that on November 2, 1954, there were approximately 472,000 registered voters in Mississippi who were eligible to vote on the proposed amendment to Section 244 of the Mississippi Constitution of 1890, and that about 95% [fol. 369] of said voters were white and fewer than 5% were negroes. This Defendant also denies that the amendment was adopted in a state where the public education facilities provided for negroes were and/or are inferior to those provided for white people.

32. This Defendant denies the averments of Paragraph 32, except that this Defendant admits that on December 21, 1954, the proposed amendment to the Mississippi Constitution was submitted to and approved by the voters, but asserts that said amendment is the best evidence of its contents.

33. This Defendant admits the averments of Paragraph 33 of the complaint.

34. This Defendant denies the averments of Paragraph 34 of the complaint, except this Defendant admits that the Mississippi Legislature adopted House Bill No. 95, Chapter 102, and Senate Bill No. 1216, Chapter 104, of the Laws of the Extraordinary Session of the Mississippi Legislature, 1955, and asserts that said House Bill and Senate Bill are the best evidence of their contents.

35. This Defendant denies the averments of Paragraph 35 of the complaint.

36. This Defendant admits the averments of Paragraph 36 of the complaint, except that he denies that he has enforced the requirements of Section 244 only when Negroes have attempted to register to vote, as is suggested by innuendo of the Plaintiff. He would show that he has

enforced the requirements of said section with reference to white applicants for registration as well as Negro applicants.

37. This Defendant is not advised as to the truth of the averments of Paragraph 37 of the complaint, and is without [fol. 370] knowledge or information sufficient to form a belief as to the truth thereof, and he therefore denies same.

38. This Defendant denies the averments of Paragraph 38 of the complaint, except that he admits that registrars of voters may select a section of the Constitution of the State of Mississippi, which any applicant for registration is called upon to read, write, and interpret. He would further show that on any given day the same section of the Constitution is submitted to both Negro and White applicants for registration.

39. This Defendant denies the averments of Paragraph 39 of the complaint, and asserts that the Mississippi Constitution is the best evidence of its contents, but states again that he submits the same sections to White and Colored applicants for registration.

40. This Defendant denies the averments of Paragraph 40 of the complaint.

41. This Defendant denies the averments of Paragraph 41 of the complaint.

42. This Defendant denies the averments of Paragraph 42 of the complaint, including subsections a, b, c, d, and e.

43. This Defendant admits the averments of Paragraph 43 of the complaint, but would show that he has not and will not use Section 244 of the Constitution as amended and the other registration laws of the State of Mississippi to prohibit qualified Negro voters from registering to vote, but has and will apply the provisions thereof equally to both White and Negro applicants for registration.

[fol. 371] Answer to Second Claim

44. This Defendant adopts his answers to Paragraph 1 through 34, and to Paragraph 37, to the averments of the First Claim of the complaint.

45. This Defendant denies the averments of Paragraph 45 of the Complaint except that this Defendant admits that in 1960, the Mississippi Legislature passed a joint resolution to amend Article 12 of the Constitution of 1890, to

include a new section (241-A) which resolution is the best evidence of its contents, and this Defendant admits that on November 8, 1960, the proposed addition to Article 12 of the Constitution was submitted to and adopted by the voters. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments that approximately 525,000 registered voters in Mississippi were eligible to vote on said proposed amendments and that about 95% were white and fewer than 5% were negro.

46. This Defendant admits the averments of Paragraph 46 of the complaint.

47. This Defendant admits the averments of Paragraph 47 of the Complaint except that this Defendant is without knowledge or information sufficient to form a belief as to the last sentence of said paragraph.

48. This Defendant admits the averments of Paragraph 48 of the complaint, but would show that any alleged acts of discrimination of Theron C. Lynd as Registrar of Forrest County, Mississippi, has no application to this Defendant, and that he has not been guilty of any acts of discrimination.

[fol. 372] 49. This Defendant denies the averments of Paragraph 49 of the complaint, except this Defendant admits that the Mississippi Legislature adopted, in 1962, House Bill No. 899, Chapter 575, General Laws of Mississippi 1962; House Bill No. 905, Chapter 569, General Laws of Mississippi 1962; House Bill No. 822, Chapter 572, General Laws of Mississippi 1962; and House Bill No. 904, Chapter 573, General Laws of Mississippi 1962, but asserts that said House Bills are the best evidence of their contents.

50. This Defendant denies the averments of Paragraph 50 of the complaint, including subparagraphs (a) and (b) thereof.

51. This Defendant denies the averments of Paragraph 51 of the complaint and the subparagraphs thereunder.

52. This Defendant denies the averments of Paragraph 52 of the complaint, and would show that since the adoption of the law requiring good moral character as a prerequisite to registering to vote, he has refused registration to no person, white or Negro, in Lowndes County, Mississippi because of the good moral character requirement.

53. This Defendant denies the averments of Paragraph 53 of the complaint, including subparagraphs (a) and (b).

54. This Defendant admits that unless he is restrained by order of this court, he will continue to enforce Section 241-A of the Mississippi Constitution and its implementing statutory provision, but would show that so far as his actions are concerned, the application of said constitutional provision and law will be the same for White and Negro applicants for registration.

[fol. 373] Answer to Third Claim

55. This Defendant adopts his answers to Paragraph 1 through 34 and to Paragraph 37, of the First Claim of the complaint and his answers to Paragraph 45 through 49 of the Second Claim of the complaint as his answers to Paragraph 55 of the complaint.

56. This Defendant denies Paragraph 56 of the complaint, except that this Defendant admits that the Mississippi Legislature, in 1955, adopted House Bill No. 95, Chapter 102, General Laws of Mississippi, extraordinary session of 1954 and 1955, but asserts that said House Bill is the best evidence of its contents.

57. This Defendant denies the averments of Paragraph 57 of the complaint, except this defendant admits that in 1957 the Congress of the United States enacted the Civil Rights Act of 1957, but asserts that said Act itself constitutes and contains the best evidence of its contents. This Defendant denies that said act vest the Attorney General of the United States with authority to bring civil actions to protect the right to vote without *distinction* of race or color.

58. This Defendant denies the averments of Paragraph 58 of the complaint, except this Defendant admits that in 1960, the Congress of the United States passed Title III of the 1960 Civil Rights Act on May 6, 1960; that the Mississippi Legislature, in 1960, adopted House Concurrent Resolution No. 36, Chapter 510, General Laws of Mississippi 1960; the Mississippi Legislature, in 1960, enacted Senate Bill No. 1883, Chapter 449, General Laws of Missis-
[fol. 374] sippi 1960, effective date April 15, 1960, but asserts that said acts and resolution themselves are the best evidence of their respective contents.

59. This Defendant denies the averments of Paragraph

59 of the complaint, and would show that since the adoption of Title III of the Civil Rights Act of 1960, he has complied with the provisions thereof.

60. This Defendant denies the averments of Paragraph 60 of the complaint, and denies that he has any intention of destroying registration records in violation of law.

Answer to Fourth Claim

61. This Defendant hereby adopts his answers to Paragraphs 1 through 34, and to Paragraph 37 of the First Claim, his answers to Paragraph 45 through 49 of the Second Claim, and his answers to Paragraph 56 through 58 of the Third Claim, as his answers to Paragraph 61 of the complaint.

62. This Defendant admits the averments of Paragraph 62 of the complaint, but would show that said averments are not pertinent to the issues raised in this lawsuit.

63. This Defendant is not advised as to the truth of the averments of Paragraph 63 of the complaint, and has no information or knowledge upon which to form a belief as to the truth of said averments, and therefore denies same.

64. This Defendant is not advised as to the truth of the averments of Paragraph 64 of the complaint, and has no information or knowledge upon which to form a belief as to the truth of said averments, and therefore denies same.

65. This Defendant is not advised as to the truth of the averments of Paragraph 65 of the complaint, and has no [fol. 375] information or knowledge upon which to form a belief as to the truth of said averments, and therefore denies same.

66. This Defendant denies the averments of Paragraph 66 of the complaint, except that this Defendant admits that the Mississippi Legislature adopted during its 1962 session House Bill 900, House Bill 901, House Bill 905, House Bill 822, House Bill 904, and House Bill 903, and asserts that said House Bills are the best evidence of their respective contents.

67. This Defendant denies the averments of Paragraph 67 of the complaint, including subparagraphs (1), (2), (3), (4), (5), and (6) of subparagraph (a), and also subparagraphs (1), (2), (3), (4), (5), (6), and (7) of subparagraph (b).

68. This Defendant denies the averments of Paragraph 68 of the complaint.

69. This Defendant admits that he is required under the law to apply the provisions of the State Statutes to all persons who apply for registration to vote. He denies all the other averments of said Paragraph 69.

70. This Defendant admits the averments of Paragraph 70 of the complaint, except that he denies the effect of which has been, is, or will be to deprive "otherwise qualified" Negro citizens in Mississippi of their right to register to vote without distinction of race or color.

[fol. 376] Wherefore, This Defendant prays, as to him, that the court will enter an order dismissing the complaint of the Plaintiff.

T. E. Wiggins, Circuit Clerk, and Registrar of Lowndes County, Mississippi.

William G. Burgin, 516 Second Ave. North Columbus, Mississippi. W. H. Jolly, 107 Waters Bldg., Columbus, Mississippi. Joe O. Sams, Jr., 514 Second Ave. North Columbus, Mississippi. By: ——, ——, Attorney for T. E. Wiggins.

Certificate of service (omitted in printing.)

[fol. 377] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3312

ANSWER OF DEFENDANT, H. K. WHITTINGTON, TO ORIGINAL ADD AMENDED COMPLAINT—Filed May 13, 1963

Comes now H. K. Whittington, one of the Defendants in the above cause, and for separate answer to the complaint and amended complaint, respectfully presents unto the Court the following:

First Defense

The Complaint fails to state a claim against this Defendant upon which relief can be granted.

[fol. 378] Second Defense

This Court as composed lacks jurisdiction over the subject matter of this action and over this Defendant.

Third Defense

Answer to First Claim

(1)

This Defendant Registrar denies that this Court has jurisdiction of this action under 42 U.S.C. 1971 (d), 28 U.S.C. 1345, and 28 U.S.C. 2281.

(2)

This Defendant Registrar denies the averments of Paragraph 2 of the complaint.

(3)

This Defendant Registrar admits the averments of Paragraph 3 of the complaint, insofar as it states the names of the Mississippi State Board of Election Commissioners and their addresses, and the capacity in which they hold the above offices; but denies that the board is an agency of the State of Mississippi.

(4)

This Defendant Registrar admits the averments of Paragraph 4.

(5)

This Defendant Registrar admits the averments of Paragraph 5.

(6)

This Defendant Registrar admits the averments of Paragraph 6.

[fol. 379] (7)

This Defendant Registrar admits the averments of Paragraph 7.

(8)

This Defendant Registrar admits the averments of Paragraph 8.

(9)

This Defendant Registrar admits the averments of Paragraph 9.

(10)

This Defendant Registrar denies that registrars of voters in Mississippi, including the Defendant H. K. Whittington Registrar, are agents of the Mississippi State Board of Election Commissioners and of the State of Mississippi and denies that this Registrar administers and enforces the Mississippi constitutional and statutory provisions which set out the requirements and procedures for the registration of voters but avers that this Defendant Registrar is an appointee, and not an agent, of the State of Mississippi and that he performs only those duties required of him by statute.

(11)

This Defendant Registrar denies that all registered voters in the State of Mississippi since at least 1892 have been White citizens.

(12)

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 12 of the complaint.

[fol. 380]

(13)

This Defendant Registrar denies the averments of Paragraph 13 of the complaint.

(14)

This Defendant Registrar denies the averments of Paragraph 14 and avers that all qualified electors of Amite County, Mississippi prior to 1890 were only those persons who qualified as electors by meeting the requirements of the statute.

(15)

This Defendant Registrar denies the averments of Paragraph 15 of the complaint.

(16)

This Defendant Registrar admits the averments of Paragraph 15 of the complaint that in 1890 a new State Constitution was adopted but denies the remainder of the averments therein as being the purpose of the adoption.

(17)

This Defendant Registrar denies the averments of Paragraph 17 of the complaint but avers that the adoption of Section 244 of the Constitution of the State of Mississippi of 1890 was for the purpose of improving the standards of those responsible for election of our governing officials and operation of the government.

(18)

This Defendant Registrar admits that since at least 1892, in fact, since 1869, registration has been and is a [fol. 381] prerequisite for voting in any election in Mississippi, but specifically denies that registration in Mississippi is permanent.

(19)

This Defendant Registrar denies the averments of Paragraph 19 of the complaint.

(20)

This Defendant Registrar for lack of information neither admits nor denies the averments of Paragraph 20.

(21)

Defendant Registrar denies the averments of Paragraph 21 of the complaint and avers the facts to be:

a) Qualified Negroes were allowed to register to vote when they presented themselves to the registrar and met the requirements of the statute for voter registration.

b) All persons whether they are literate or illiterate Negroes or literate or illiterate White persons were required to interpret a section of the Mississippi Con-

stitution as required by Section 244 of the Constitution of Mississippi 1890.

c) Negroes were not excluded from voting in Democratic primary elections. Defendant Registrar admits during this time victory in the Democratic primary in Mississippi was tantamount to election.

(22)

This Defendant Registrar admits the decision in *Peay v. Cox,* 190 F. 2d 123, as stated in said reported decision but not otherwise.

[fol. 382] (23)

This Defendant Registrar admits the averments of Paragraph 23 of the complaint.

(24)

This Defendant Registrar admits that in 1952 the Mississippi Legislature passed a joint resolution proposing an amendment to Section 244 of the Mississippi Constitution of 1890, but asserts that said resolution itself is the best evidence of its content. This Defendant further admits that the proposed amendment was submitted to the voters in a general election but was not adopted for the reason that a majority of the qualified electors voting in said election did not vote for the proposed amendment.

(25)

This Defendant Registrar denies that the Legislature of the State of Mississippi did not meet in 1953, and affirmatively states that said Legislature did meet in 1953 in an extraordinary session. This Defendant denies the remainder of the averments contained in Paragraph 25 of the complaint except that this Defendant admits that the Legislature of the State of Mississippi adopted by a concurrent resolution a proposed amendment to Section 244 of the Constitution of 1890 of the State of Mississippi, being Senate Concurrent Resolution No. 13, Chapter 427 of the General Laws of Mississippi of 1954, and asserts that said resolution itself, is the best evidence of its content.

(26)

This Defendant Registrar because of lack of information, neither admits nor denies Paragraph 26 of the complaint.

[fol. 383] (27)

This Defendant Registrar denies the averments of Paragraph 27 and denies that the proposed amendment to Section 244 of the Mississippi Constitution of 1890 was designed to perpetuate in Mississippi White political supremacy, a racially segregated society, and the disfranchisement of Negroes; but avers that said amendment was designed and intended to promote better government through improved standards of those registering to vote and to participate in voting in election of our officers and the operation of our government, and in no wise applies to anyone on the basis of race, creed or color.

(28)

This Defendant Registrar neither admits nor denies Paragraph 28 of the complaint and refers to the document itself for the contents thereof.

(29)

This Defendant Registrar denies that in 1954 the Supreme Court declared that state operation of racially segregated schools was unconstitutional. As to the remaining averments contained in this paragraph having to do with the formation of citizens councils, their purpose and their projects, this Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments and, therefore, deny the same.

(30)

This Defendant Registrar in answer to Paragraph 30 of the complaint refers to Chapter 39 of the extraordinary [fol. 384] session of the legislature of 1954 for more complete answer to said paragraph.

(31)

This Defendant Registrar admits the first sentence of Paragraph 31. Defendant Registrar for lack of informa-

tion, neither admits nor denies that there were 472,000 registered voters in the State of Mississippi on November 2, 1954 and neither admits nor denies that 95% were White and fewer than 5% were Negro. Defendant Registrar denies that the educational facilities provided for Negroes were and are inferior to those provided for White persons.

(32)

This Defendant Registrar denies the averments of Paragraph 32, except that this Defendant admits that on December 21, 1954, the proposed amendment to the Mississippi Constitution was submitted to and approved by the voters, but asserts that said amendment is the best evidence of its contents.

(33)

This Defendant Registrar admits the averments of Paragraph 33 and affirmatively states that said extraordinary session was also called for the other purposes set forth in the proclamation of Hugh White, Governor, dated December 29, 1954.

(34)

This Defendant Registrar denies the averments of Paragraph 34 of the complaint, except this defendant admits [fol. 385] that the Mississippi Legislature adopted House Bill No. 95, Chapter 102, and Senate Bill No. 1216, Chapter 104, of the Laws of the Extraordinary Session of the Mississippi Legislature, 1955, and asserts that said House Bill and Senate Bill are the best evidence of their contents.

(35)

This Defendant Registrar denies the averments of Paragraph 35 of the complaint.

(36)

This Defendant Registrar admits the averments of Paragraph 36 of the complaint but avers that he has also enforced the requirements of Section 244 when persons of all races have attempted to register to vote and has not required any Negro to meet more strigent requirements than Whites.

(37)

This Defendant Registrar for lack of information, neither admits nor denies the averments of Paragraph 37 of the complaint.

(38)

This Defendant Registrar denies the averments of Paragraph 38 of the complaint.

(39)

This Defendant Registrar denies the averments of Paragraph 39 of the complaint.

(40)

This Defendant Registrar denies the averments of Para graph 40 of the complaint.

[fol. 386] (42)

This Defendant Registrar denies the averments of Paragraph 41 of the complaint.

(42)

This Defendant Registrar denies that Section 244 of the Mississippi Constitution, as Amended, is unconstitutional and specifically denies the averments of subparagraphs (a), (b), (c), (d), and (e) of Paragraph 42 of the complaint. In addition, he reiterates the answers he has already made to those same averments as they appear elsewhere in the complaint.

(43)

This Defendant Registrar admits unless restricted by order of this court he will continue to be governed by the requirements of Section 244, as amended, and its implementing statutory provisions as qualifications for registration to vote.

Answer to Second Claim

(44)

This Defendant Registrar, in answer to Paragraph 44 of the complaint, adopts his answers to Paragraphs 1 through 34, and to Paragraph 37, of the complaint.

(45)

This Defendant Registrar admits the the first two sentences of Paragraph 45 of the complaint. Defendant Registrar for lack of information, neither admits nor denies the next two sentences of Paragraph 45 of the complaint.

[fol. 387] (46)

This Defendant Registrar admits the averments of Paragraph 46 of the complaint.

(47)

This Defendant Registrar neither admits nor denies the averments of Paragraph 47 of the complaint not being duly advised as to the actions of the Attorney General throughout the State of Mississippi commencing in August, 1960 to date but admits that he does know that some such action was taken.

(48)

This Defendant Registrar neither admits nor denies the averments of Paragraph 48 of the complaint not being fully advised thereto and not being familiar with or a party to any of the court procedures mentioned or the orders of the court therein.

(49)

This Defendant Registrar denies the averments of Paragraph 49 of the complaint, except this defendant admits that the Mississippi Legislature adopted, in 1962, House Bill No. 899, Chapter 575, General Laws of Mississippi 1962; House Bill No. 905, Chapter 569, General Laws of Mississippi 1962; House Bill No. 822, Chapter 572, General Laws of Mississippi 1962; and House Bill No. 904, Chapter 573, General Laws of Mississippi 1962, but asserts that said House Bills are the best evidence of their contents.

(50)

This Defendant Registrar denies the averments of Paragraph 50 of the complaint but avers that he has not at any time invoked the good moral character requirement as a condition to registration.

[fol. 388] (51)

This Defendant Registrar denies the averments of Paragraph 51 of the complaint.

(52)

This Defendant Registrar denies all of the averments of Paragraph 52 of the complaint and denies that the enforcement or the threat of enforcement of the character qualification has deterred, is deterring and will continue to deter qualified Negro citizens from applying to register to vote and denies that the threatened use and the use by this Registrar will deprive otherwise qualified Negro citizens of the right to register and vote.

(53)

This Defendant Registrar denies the averments of Paragraph 53 of the complaint and avers that Section 241-A of the Mississippi Constitution makes no distinction between Negroes and White as to the requirement of good moral character to be a qualified elector.

(54)

This Defendant Registrar admits in answer of Paragraph 54 of the complaint that unless he is restrained by order of this court or some other court, he will continue to enforce Section 241-A of the Constitution of Mississippi and its implementing statutory provisions as a qualification to register to vote only in the manner hereinabove mentioned.

Answer to Third Claim

(55)

This Defendant Registrar, in answer to Paragraph 55 of the complaint, adopts his answers to Paragraphs 1 [fol. 389] through 34, and to Paragraph 37, and to Paragraphs 45 through 49 of the complaint.

(56)

This Defendant Registrar denies Paragraph 56 of the complaint, except that this defendant admits that the Mississippi Legislature, in 1955, adopted House Bill No. 95,

Chapter 102, General Laws of Mississippi, extraordinary sessions of 1954 and 1955, but asserts that said House Bill is the best evidence of its contents.

(57)

This Defendant Registrar denies the averments of Paragraph 57 of the complaint, except this defendant admits that in 1957 the Congress of the United States enacted the Civil Rights Act of 1957, but asserts that said Act itself constitutes and contains the best evidence of its contents. This Defendant denies that said act vests the Attorney General of the United States with authority to bring civil actions to protect the right to vote without *distinction* of race or color.

(58)

This Defendant Registrar denies the averments of Paragraph 58 of the complaint, except this defendant admits that in 1960, the Congress of the United States passed Title III of the 1960 Civil Rights Act on May 6, 1960; that the Mississippi Legislature, in 1960, adopted House Concurrent Resolution No. 36, Chapter 510, General Laws of Mississippi 1960; the Mississippi Legislature, in 1960, enacted Senate Bill No. 1883, Chapter 449, General Laws of Mis- [fol. 390] sissippi 1960, effective date April 15, 1960, but asserts that said acts and resolution themselves are the best evidence of their respective contents.

(59)

This Defendant Registrar denies all the averments of Paragraph 59 of the complaint, as amended, except in reference to destruction of certain registration application forms, and as to this he makes the following explanation: acting under authority of Section 3209.6 of the Mississippi Code of 1942, as Amended, this Defendant destroyed a number of registration application forms of those applicants who passed the voter registration test but has at all times kept and now has on hand all application forms of those who failed the test for registration. This Defendant has not destroyed any records pertaining to registration or voting since being apprized of the provisions of Ttitle III of the Civil Rights Act of 1960.

(60)

This Defendant Registrar denies that unless restrained by an order of this court that he will continue to destroy voter registration records in violation of the Constitution of the United States and the Civil Rights Act of 1960 but avers that he has maintained all voter registration records since being apprized as to the provisions of Title III of the Act of 1960 and will continue to maintain said records unless instructed by the court to do otherwise.

[fol. 391] Answer to Fourth Claim

(61)

This Defendant Registrar, in answer to Paragraph 61 of the complaint, adopts his answers to Paragraphs 1 through 34, to Paragraph 37, to Paragraphs 45 through 49, and to Paragraphs 56 through 58 of the complaint.

(62)

This Defendant Registrar for lack of information, neither admits nor denies Paragraph 62 of the complaint.

(63)

This Defendant Registrar for lack of information, neither admits nor denies Paragraph 63 of the complaint.

(64)

This Defendant Registrar for lack of information, neither admits nor denies Paragraph 64 of the complaint.

(65)

This Defendant Registrar for lack of information, neither admits nor denies Paragraph 65 of the complaint.

(66)

This Defendant Registrar denies the averments of Paragraph 66 of the complaint, except that this defendant admits that the Mississippi Legislature adopted during its 1962 session House Bill 900, House Bill 901, House Bill 901, House Bill 822, House Bill 904, and House Bill 903, and asserts that said House Bills are the best evidence of their respective contents.

[fol. 392] (67)

This Defendant Registrar denies the averments of Paragraph 67 of the complaint.

(68)

This Defendant Registrar denies the averments of Paragraph 68 of the complaint.

(69)

This Defendant Registrar in answer to Paragraph 69 of the complaint, avers that he will continue to apply the new requirements and that he has applied the requirements but denies that said requirements are onerous requirements and denies that their enforcement and the threat of their enforcement has deterred, are deterring and will continue to deter otherwise qualified Negroes in Mississippi from applying to register to vote.

(70)

This Defendant Registrar admits that unless restrained by order of this court or some other court, he will continue to enforce the new registration requirements but denies that the effect of same has been to deprive otherwise qualified Negro citizens in Mississippi of their right to register to vote.

Wherefore, this Defendant Registrar prays that the complaint and amended complaint be dismissed and that [fol. 393] the Plaintiff be denied the relief as prayed for in the complaint.

H. K. Whittington, Circuit Clerk and Registrar of Amite County, Defendant. T. F. Badon, Attorney at Law, Liberty, Mississippi. Joe D. Gordon, Attorney at Law, Liberty, Mississippi. Joe T. Patterson, Attorney General of the State of Mississippi. Will S. Wells, Dugas Shands, Guy N. Rogers, and William A. Allain, Assistant Attorneys General for the State of Mississippi. Peter M. Stockett, Jr. and Charles Clark, Special Assistant Attorneys General of the State of Mississippi. By: T. F. Badon, Attorney.

Certificate of service (omitted in printing.)

[fol. 394] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3312

[Title omitted]

ANSWER ON BEHALF OF ROSS R. BARNETT, JOE T. PATTERSON, AND HEBER A. LADNER, AS MEMBERS OF THE MISSISSIPPI STATE BOARD OF ELECTION COMMISSIONERS—Filed May 13, 1963

First Defense

The Complaint fails to state a claim against this Defendant upon which relief can be granted.

Second Defense

This Court as composed lacks jurisdiction over the subject matter of this action and over this Defendant.

[fol. 395] Third Defense

Answer to First Claim

1. This Defendant denies the allegations of Paragraph 1 of the Complaint.

2. This Defendant denies the allegation of Paragraph 2 of the Complaint; and would state that the State of Mississippi is not a proper party to this action and cannot be joined as a party Defendant for the reason that Section 601 (b) of the Civil Rights Act of 1960 is unconstitutional on its face.

3. This Defendant admits that Ross R. Barnett, Joe T. Patterson and Heber A. Ladner are members of the Mississippi State Board of Election Commissioners by virtue of their official positions as Governor, Attorney General and Secretary of State, respectively, and admits that the

offices of said Defendants are in the State Capitol, Jackson, Mississippi, but denies that the State Board of Election Commissioners is an agency of the Defendant State of Mississippi.

4. This Defendant admits the allegations of Paragraph 4 of the Complaint.

5. This Defendant admits the allegations of Paragraph 5 of the Complaint.

6. This Defendant admits the allegations of Paragraph 6 of the Complaint.

7. This Defendant admits the allegations of Paragraph 7 of the Complaint.

8. This Defendant admits the allegations of Paragraph 8 of the Complaint.

[fol. 396] 9. This Defendant admits the allegations of Paragraph 9 of the Complaint.

10. This Defendant denies that registrars of voters in Mississippi are agents of the Mississippi State Board of Election Commissioners and of the State of Mississippi; and denies that said registrars administered and enforced the Mississippi Constitutional and Statutory Provisions which set out the requirements and procedures for the registration of voters. The said registrars are appointees, but not agents, of the Mississippi State Board of Election Commissioners. They perform only those duties imposed upon them by the statutes of Mississippi.

11. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11 of the Complaint.

12. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12 of the Complaint.

13. This Defendant denies the allegations of Paragraph 13 of the Complaint.

14. This Defendant denies the allegations of Paragraph 14 of the Complaint.

15. This Defendant denies the allegations of Paragraph 15 of the Complaint.

16. This Defendant denies the allegations of Paragraph 16 of the Complaint, except this Defendant admits that in 1890 a Mississippi Constitutional Convention adopted a new State Constitution.

[fol. 397] 17. This Defendant denies the allegations of Paragraph 17 except that this Defendant admits that the Mississippi Constitution of 1890 contains Section 244, and asserts that said Section itself is the best evidence of its content.

18. This Defendant admits that registration has been a prerequisite for voting since at least 1892, in fact, since the Constitution of 1869, in any election in Mississippi. This Defendant denies that registration in Mississippi is permanent and affirmatively states that new registrations are authorized by statute whenever the conditions specified in the statutes existed.

19. This Defendant denies the allegations of Paragraph 19 of the Complaint.

20. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 of the Complaint.

21. This Defendant denies the allegations of Paragraph 21 of the Complaint and each of the subparagraphs thereunder.

22. This Defendant admits the allegations of Paragraph 22 except that this Defendant admits that the Court of Appeals for the Fifth Circuit in the case of *Peay* v. *Cox*, 190 F. 2d 123, spoke in dicta of the either/or elements of Section 244 of the Mississippi Constitution of 1890. The rationale of this case was that where an administrative remedy is available it must be exhausted before injunction may be had to control the registrar in the conduct of his office.

[fol. 398] 23. This Defendant admits the allegations of Paragraph 23 of the Complaint.

24. This Defendant admits that in 1952 the Mississippi Legislature passed a joint resolution proposing an amendment to Section 244 of the Mississippi Constitution of 1890, but asserts that said resolution itself is the best evidence of its content. This Defendant further admits that the proposed amendment was submitted to the voters in a general election but was not adopted for the reason that a majority of the qualified electors voting in said election did not vote for the proposed amendment.

25. This Defendant denies that the Legislature of the State of Mississippi did not meet in 1953, and affirmatively

states that said Legislature did meet in 1953 in an extraordinary session. This Defendant denies the remainder of the allegations contained in Paragraph 25 of the Complaint except that this Defendant admits that the Legislature of the State of Mississippi adopted by a concurrent resolution a proposed amendment to Section 244 of the Constitution of 1890 of the State of Mississippi, being Senate Concurrent Resolution No. 13, Chapter 427 of the General Laws of Mississippi of 1954, and asserts that said resolution, itself, is the best evidence of its content.

26. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 26 of the Complaint.

27. This Defendant denies the allegations of Paragraph 27 of the Complaint. The proposed amendment to Section [fol. 399] 244 of the Constitution of 1890 of the State of Mississippi was designed to upgrade the electorate of Mississippi by requiring every person seeking to become a qualified elector, regardless of his or her race, color, or previous condition of servitude, to be able to read and write any section of the Constitution of this State and to give a reasonable interpretation thereof. Its provisions bear on persons alike regardless of race, color or previous condition of servitude. If anyone is disqualified by reason thereof, his or her disqualification stems from his or her inability to read and write any section of the Constitution of this State and to give a reasonable interpretation thereof, not from his or her race, color, or previous condition of servitude.

28. This Defendant denies the allegations of Paragraph 28 except that this Defendant admits that during a regular 1954 session of the Mississippi Legislature, a concurrent resolution was adopted by the House of Representatives, April 7, 1954, and by the Senate, April 28, 1954, which established the Legal Educational Advisory Committee, and asserts that said resolution is the best evidence of its content.

29. This Defendant denies that in 1954 the Supreme Court declared that state operation of racially segregated schools was unconstitutional. As to the remaining allegations contained in this paragraph having to do with the formation of citizens councils, their purpose and their

projects, this Defendant is without knowledge or informa-
[fol. 400] tion sufficient to form a belief as to the truth of these allegations, and, therefore, deny the same.

30. This Defendant denies the allegations of Paragraph 30 of the Complaint, except that this Defendant admits that the Mississippi Legislature met in September of 1954 in an extraordinary session and adopted House Concurrent Resolution No. 2, Chapter 39, General Laws of Mississippi, Extraordinary Session of 1954 and 1955, and asserts that said resolution is the best evidence of its contents.

31. This Defendant admits the allegations of Paragraph 31 except that this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations that on November 2, 1954, there were approximately 472,000 registered voters in Mississippi who were eligible to vote on the proposed amendment to Section 244 of the Mississippi Constitution of 1890, and that about 95% of said voters were white and fewer than 5% were negroes. This Defendant also denies that the amendment was adopted in a state where the public education facilities provided for negroes were and/or are inferior to those provided for white people.

32. This Defendant denies the allegations of Paragraph 32, except that this Defendant admits that on December 21, 1954, a proposed amendment to the Mississippi Constitution designated Article 8, Section 213-B was submitted to and approved by the voters, and asserts that said amendment is the best evidence of its contents.

[fol. 401] 33. This Defendant admits the allegations of Paragraph 33 and affirmatively states that said extraordinary session was also called for the other purposes set forth in the proclamation of Hugh White, Governor, dated December 29, 1954.

34. This Defendant denies the allegations of Paragraph 34 of the Complaint, except this Defendant admits that the Mississippi Legislature adopted House Bill No. 95, Chapter 102, and Senate Bill No. 1216, Chapter 104, of the Laws of the Extraordinary Session of the Mississippi Legislature, 1955, and asserts that said House Bill and Senate Bill are the best evidence of their contents.

35. This Defendant denies the allegations of Paragraph 35 of the Complaint.

36. This Defendant admits the allegations of Paragraph 36 of the Complaint. This Defendant is informed and believes that all registrars of voters in the State of Mississippi have enforced the provisions of Section 244, as amended, since its amendment when members of the white race have attempted to register to vote.

37. This Defendant is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 37 of the Complaint.

38. This Defendant denies the allegations of Paragraph 38 of the Complaint and all subparagraphs thereunder,

39. This Defendant denies the allegations of Paragraph 39 of the Complaint and asserts that the Constitution of the State of Mississippi is the best evidence of its contents. [fol. 402] 40. This Defendant denies the allegations of Paragraph 40 of the Complaint.

41. This Defenant denies the allegations of Paragraph 41 of the Complaint.

42. This Defendant denies the allegations of Paragraph 42 of the Complaint and the subparagraphs thereunder.

43. This Defendant denies the allegations of Paragraph 43 of the Complaint as to the acts and actions of this Defendant.

Answer to Second Claim

44. This Defendant, in answer to Paragraph 44 of the Complaint, adopts its answers to Paragraphs 1 through 34, and to Paragraph 37, of the Complaint.

45. This Defendant denies the allegations of Paragraph 45 of the Complaint except that this Defendant admits that in 1960, the Mississippi Legislature passed a joint reolustion to amend Article 12 of the Constitution of 1890, to include a new section (241-A) which resolution is the best evidence of its contents, and this Defendant admits that on November 8, 1960, the proposed addition to Article 12 of the Constitution was submitted to and adopted by the voters. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations that approximately 525,000 registered voters in Mississippi were eligible to vote on said proposed amendment and that about 95% were white and fewer than 5% were negro.

[fol. 403] 46. This Defendant admits the allegations of Paragraph 46 of the Complaint.

47. This Defendant admits the allegations of Paragraph 47 of the Complaint except that this Defendant is without knowledge or information sufficient to form a belief as to the last sentence of said paragraph.

48. This Defendant admits the allegations of Paragraph 48 of the Complaint.

49. This Defendant denies the allegations of Paragraph 49 of the Complaint, except this Defendant admits that the Mississippi Legislature adopted, in 1962, House Bill No. 899, Chapter 575, General Laws of Mississippi 1962; House Bill No. 905, Chapter 659, General Laws of Mississippi 1962; House Bill No. 822, Chapter 572, General Laws of Mississippi 1962; and House Bill No. 904, Chapter 573, General Laws of Mississippi 1962, but asserts that said House Bills are the best evidence of their contents.

50. This Defendant denies the allegations of Paragraph 51 of the Complaint and the subparagraphs thereunder.

51. This Defendant denies the allegations of Paragraph 51 of the Complaint and the subparagraphs thereunder.

52. This Defendant denies the allegations of Paragraph 52 of the Complaint.

53. This Defendant denies the allegations of Paragraph 53 of the Complaint and the subparagraphs thereunder.

[fol. 404] 54. This Defendant denies the allegations of Paragraph 54 of the Complaint as to the act and action of this Defendant.

Answer to Third Claim

55. This Defendant, in answer to Paragraph 55 of the Complaint, adopts its answer to Paragraphs 1 through 34, and to Paragraph 37 and to Paragraphs 45 through 49, of the Complaint.

56. This Defendant denies Paragraph 56 of the Complaint, except that this Defendant admits that the Mississippi Legislature, in 1955, adopted House Bill No. 95, Chapter 102, General Laws of Mississippi, extraordinary sessions of 1954 and 1955, but asserts that said House Bill is the best evidence of its contents.

57. This Defendant denies the allegations of Paragraph 57 of the Complaint, except this Defendant admits that in 1957 the Congress of the United States enacted the Civil

Rights Act of 1957, but asserts that said Act itself constitutes and contains the best evidence of its contents. This Defendant denies that said act vest the Attorney General of the United States with authority to bring civil actions to protect the right to vote without *distinction* of race or color.

58. This Defendant denies the allegations of Paragraph 58 of the Complaint, except this Defendant admits that in 1960, the Congress of the United States passed Title III of the 1960 Civil Rights Act on May 6, 1960; that the Mississippi Legislature, in 1960, adopted House Concurrent Resolution No. 36, Chapter 510, General Laws of Missis- [fol. 405] sippi 1960; the Mississippi Legislature, in 1960, enacted Senate Bill No. 1883, Chapter 449, General Laws of Mississippi 1960, effective date April 15, 1960, but asserts that said acts and resolution themselves are the best evidence of their respective contents.

59. This Defendant denies the allegations of Paragraph 59 of the Complaint except that this Defendant admits that it is advised that some registration application forms, including some forms received by Defendant, H. K. Whittington in Amite County, Mississippi, have been destroyed.

60. This Defendant denies the allegations of Paragraph 60 of the Complaint.

Answer to Fourth Claim

61. This Defendant, in answer to Paragraph 61 of the Complaint, adopts its answers to Paragraphs 1 through 34, to Paragraph 37, to Paragraphs 45 through 49, and to Paragraphs 56 through 58, of the Complaint.

62. This Defendant denies the allegations of Paragraph 62 of the Complaint.

63. This Defendant admits the allegations of Paragraph 63 of the Complaint.

64. This Defendant denies the allegations of Paragraph 64 of the Complaint, except this Defendant admits that in March, 1962, the second hearing was held in the United States District Court for the Southern District of Mississippi on a motion for a preliminary injunction in an action by the United States against the Registrar of voters of Forrest County, and asserts that the record of said hearing is the best evidence of said proceedings.

[fol. 406] 65. This Defendant denies the allegations of Paragraph 65 of the Complaint, except this Defendant admits that on April 10, 1962, the United States Court of Appeals for the Fifth Circuit granted an injunction pending appeal against the Registrar , voters of Forrest County, Mississippi, and the Sta of Mississippi, and asserts that said injunction is the best evidence of its contents.

66. This Defendant denies the allegations of Paragraph 66 of the Complaint, except that this Defendant admits that the Mississippi Legislature adopted during its 1962 session House Bill 900, House Bill 901, House Bill 905, House Bill 822, House Bill 904, and House Bill 903, and asserts that said House Bills are the best evidence of their respective contents.

67. This Defendant denies the allegations of Paragraph 67 of the Complaint and the subparagraphs thereunder.

68. This Defendant denies the allegations of Paragraph 68 of the Complaint.

69. This Defendant denies the allegations of Paragraph 69 of the Complaint.

70. This Defendant denies the allegations of Paragraph 70 of the Complaint.

This Defendant denies that Complainant is entitled to any relief in this action.

State of Mississippi, by Joe T. Patterson, Attorney General for the State of Mississippi, Jackson, Mis-
[fol. 407] sissippi. Will S. Wells, Dugas Shands, Guy N. Rogers and William A. Allain, Assistant Attorneys General for the State of Mississippi. Peter M. Stockett, Jr. and Charles Clark, Special Assistant Attorneys General for the State of Mississippi. By Charles Clark, Special Assistant Attorney General for the State of Mississippi, One of the Attorneys of Record for Defendants.

Certificate of service (omitted in printing.)

[fol. 408] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3312

[Title omitted]

ANSWER ON BEHALF OF MRS. PAULINE EASLEY, CIRCUIT CLERK AND REGISTRAR OF CLAIBORNE COUNTY—Filed May 13, 1963.

First Defense

The Complaint fails to state a claim against this Defendant upon which relief can be granted.

Second Defense

This Court as composed lacks jurisdiction over the subject matter of this action and over this Defendant.

Third Defense

1. This Defendant denies the allegations of Paragraph 1 of the Complaint.

[fol. 409] 2. She admits that the State of Mississippi is joined pursuant to Section 601 (b) of the Civil Rights Act of 1960, but denies that the State of Mississippi is properly joined herein.

3. She admits the allegations of Paragraph 3 of the Complaint insofar as it states the names of the Mississippi State Board of Election Commissioners, and their addresses, and the capacity in which they hold the above office; but denies that the Board is an agency of the State of Mississippi within the meaning of paragraph 601(b) of the Civil Rights Act of 1960.

4. She admits the allegations of Paragraph 4 of the Complaint.

5. She admits the allegations of Paragraph 5 of the Complaint.

6. She admits the allegations of Paragraph 6 of the Complaint.

7. She admits the allegations of Paragraph 7 of the Complaint.

8. She admits the allegations of Paragraph 8 of the Complaint.

9. She admits the allegations of Paragraph 9 of the Complaint.

10. She denies the allegations of agents in Paragraph 10 of the Complaint, and denies that they "enforce" the Mississippi Constitution and statutory provisions which set out the requirements and procedures for the registration of voters, but says that they perform only those actions in regard to procedures and requirements for registration of voters as are required of them by the statutes and Con- [fol. 410] stitution of the State of Mississippi.

11. She denies the allegations of Paragraph 11 of the Complaint.

12. She denies the allegations and statistics of Paragraph 12 of the Complaint; and shows that these are not pertinent herein, as both figures on voting age population and registration may contain enumerations of parties who because of residence requirements, may not be qualified, and that the number registered may include parties who have died, or have moved from the county or precinct in which they are registered, but whose names have not been taken off or purged from the rolls.

13. She denies the allegations of Paragraph 13 of the Complaint.

14. She denies the allegations of Paragraph 14 of the Complaint, as even prior to 1890, registration was required to qualify anyone for voting.

15. She denies the allegations of Paragraph 15 of the Complaint.

16. She admits the allegations of Paragraph 16 of the Complaint that in 1890 a new State Constitution was adopted; but she denies the remainder of the allegations therein.

17. She denies the allegations of Paragraph 17 of the Complaint.

18. She admits the allegations of Paragraph 18 of the Complaint as to registration being a prerequisite to voting; but she denies that registration is permanent.

19. She denies the allegations of Paragraph 19 of the Complaint.

[fol. 411] 20. On information and belief, she denies the allegations of Paragraph 20 of the Complaint.

21. She denies the allegations of Paragraph 21 of the Complaint.

22. She is without information to admit or deny the allegations of Paragraph 22 of the Complaint.

23. She admits the allegations of Paragraph 23 of the Complaint; except that she says that she is informed and believes that the general standards of literacy of all persons, and all races, has increased since 1890.

24. She admits the passage of the joint resolution mentioned in Paragraph 24 of the Complaint, and the statement of the contents thereof, and its submission to the voters; but she denies the conclusion drawn in the Complaint as to the way the vote was counted.

25. She denies that the Legislature of the State of Mississippi did not meet in 1953, and affirmatively states that said Legislature did meet in 1953 in an extraordinary session. This Defendant denies the remainder of the allegations contained in Paragraph 25 of the Complaint except that this Defendant admits that the Legislature of the State of Mississippi adopted by a concurrent resolution a proposed amendment to Section 244 of the Constitution of 1890 of the State of Mississippi, being Senate Concurrent Resolution No. 18, Chapter 427 of the General Laws of Mississippi of 1954, and asserts that said resolution, itself, is the best evidence of its content.

26. She denies from lack of information the allegations of Paragraph 26 of the Complaint.

[fol. 412] 27. She denies the allegations of Paragraph 27 of the Complaint.

28. She admits the allegations of Paragraph 28 of the Complaint as to the creation of the Legal Educational Advisory Committee; but denies the remainder of the allegations therein.

29. She denies the allegations of Paragraph 29 of the Complaint.

30. She denies the allegations of Paragraph 30 of the Complaint, except that this Defendant admits that the Mississippi Legislature met in September of 1954 in an extraordinary session and adopted House Concurrent Resolution No. 2, Chapter 39, General Laws of Mississippi,

Extraordinary Session of 1954 and 1955, and asserts that said resolution is the best evidence of its contents.

31. She admits the allegations of Paragraph 31 of the Complaint as to the proposed amendment being submitted to the voters; she denies for lack of information the allegations regarding the number of registered voters, or any percentage thereasto, as to race; she denies the remainder of the allegations of this paragraph.

32. She denies the allegations of Paragraph 32 of the Complaint, except that this Defendant admits that on December 21, 1954, the proposed amendment to the Mississippi Constitution was submitted to and approved by the voters, but asserts that said amendemnt is the best evidence of its contents.

33. She admits the allegations of Paragraph 33 of the Complaint and affirmatively states that said extraordinary session was also called for the other purposes set forth in the proclamation of Hugh White, Governor, dated Decem- [fol. 413] ber 29, 1954.

34. She denies the allegations of Paragraph 34 of the Complaint, except this Defendant admits that the Mississippi Legislature adopted House Bill No. 95, Chapter 102, and Senate Bill No. 1216, Chapter 104, of the Laws of the Extraordinary Session of the Mississippi Legislature, 1955, and asserts that said House Bill and Senate Bill are the best evidence of their contents.

35. She denies the allegations of Paragraph 35 of the Complaint.

36. She admits the allegations of Paragraph 36 of the Complaint as to the fact that she has applied the provisions of Section 244, as amended; and says that she does this when any person whatsoever presents themselves and requests to register to vote, making no distinction between any persons so presenting themselves for any reason.

37. For lack of information, she denies the allegations of Paragraph 37 of the Complaint.

38. She denies the allegations of Paragraph 38 of the Complaint.

39. She denies the allegations of Paragraph 39 of the Complaint and asserts that the Constitution of the State of Mississippi is the best evidence of its contents.

40. She denies the allegations of Paragraph 40 of the

Complaint; she shows that in the democratic, republican form of government it can be administered most effectively only if the electors can comprehend and understand the matters which might be submitted to them for voting; and that an attempt to upgrade the education of the electors is [fol. 414] in the furtherance of a good, democratic, republican government. No definition of a democratic, republican government calls for universal sufferage to all.

41. She admits that she uses and will continue to use the interpretation test and the duties and obligations test in receiving applicants to register, but shows that this is done for all persons of all races; and that these are not done to deprive anyone of the right to register to vote; that anyone who meets the requirements of the laws of the state for registration, including the passing of the tests, is registered, regardless of their race; she denies the threat of the enforcements of these tests as alleged in this paragraph has deterred, or does deter, or will continue to deter anyone from applying for registration to vote.

42. She denies the allegations of Paragraph 42 of the Complaint and the subparagraphs thereunder.

43. She admits the allegations of Paragraph 43 of the Complaint to the extent that she will continue to abide by the requirements set out in the Mississippi Constitution and laws in the registration of voters, but denies that she has any other enforcement duties in this matter.

Answer to Second Claim

44. Answering Paragraph 44 of the Complaint, the paragraphs which are incorporated in the second claim, thereby, are admitted or denies as set out hereinabove for the particular paragraphs.

45. She denies the allegations of Paragraph 45 of the Complaint except that she admits that in 1960, the Missis- [fol. 415] sippi Legislature passed a joint resolution to amend Article 12 of the Constitution of 1890, to include a new section (241-A) which resolution is the best evidence of its contents, and this Defendant admits that on November 8, 1960, the proposed addition to Article 12 of the Constitution was submitted to and adopted by the voters. She is without knowledge or information sufficient to form a belief as to the truth of the allegations that approximately

525,000 registered voters in Mississippi were eligible to vote on said proposed amendment and that about 95% were white and fewer than 5% were negro.

46. She admits the allegations of Paragraph 46 of the Complaint.

47. For lack of information she denies the allegations of Paragraph 47 of the Complaint.

48. For lack of information she denies the allegations of Paragraph 48 of the Complaint.

49. She denies the allegations of Paragraph 49 of the Complaint, excpt this Defendant admits that the Mississippi Legislature adopted, in 1962, House Bill No. 899, Chapter 575, General Laws of Mississippi 1962; House Bill No. 905, Chapter 569, General Laws of Mississippi 1962; House Bill No. 822, Chapter 572, General Laws of Mississippi 1962; and House Bill No. 904, Chapter 573, General Laws of Mississippi 1962, but asserts that said House Bills are the best evidence of their contents.

50. She denies the allegations of Paragraph 50 of the Complaint and the subparagraphs thereunder.

51. She denies the allegations of Paragraph 51 of the Complaint and the subparagraphs thereunder.

[fol. 416] 52. She denies the allegations of Paragraph 52 of the Complaint.

53. She denies the allegations of Paragraph 53 of the Complaint.

54. She admits that she will continue to apply the standards of Section 241-A of the Constitution, but denies that she has any further enforcement rights thereasto.

Answer to Third Claim

55. Answering Paragraph 55 to the Complaint, as to the paragraphs incorporated therein by reference, she either admits or denies these, as more particularly hereinabove set out in this Answer.

56. She denies Paragraph 56 of the Complaint, except that she admits that the Mississippi Legislature, in 1955, adopted House Bill No. 95, Chpater 102, General Laws of Mississippi, extraordinary sessions of 1954 and 1955, but asserts that said House Bill is the best evidence of its contents.

57. She denies the allegations of Paragraph 57 of the Complaint, except this Defendant admits that in 1957 the Congress of the United States enacted the Civil Rights Act of 1957, but asserts that said Act itself constitutes and contains the best evidence of its contents. This Defendant denies that said act vest the Attorney General of the United States with authority to bring civil actions to protect the right to vote without *distinction* of race or color.

58. This Defendant denies the allegations of Paragraph 58 of the Complaint, except that she admits that in 1960, the Congress of the United States passed Title III of the 1960 Civil Rights Act on May 6, 1960; that the Mississippi [fol. 417] Legislature, in 1960, adopted House Concurrent Resolution No. 36, Chapter 510, General Laws of Mississippi 1960; the Mississippi Legislature, in 1960, enacted Senate Bill No. 1883, Chapter 449, General Laws of Mississippi 1960, effective date April 15, 1960, but asserts that said acts and resolution themselves are the best evidence of their respective contents.

59. She denies the allegations of Paragraph 59 of the Complaint as to the purpose and effect of the statute; she admits that some registration and application forms may have been destroyed, both by her and by others; but says that when they were destroyed, it was done so in ignorance of the passage of Title III of the Civil Rights Act of 1960, and of the contents thereof, and not for any willful purpose; and further says that as soon as she learned of the contents of said Title III of the Civil Rights Act of 1960, she commenced keeping all application forms as provided therein; she denies all of the other allegations in said paragraph.

60. She denies the allegations of Paragraph 60 of the Complaint.

Answer to Fourth Claim

61. Answering Paragraph 61 of the Complaint, as to the paragraphs incorporated therein by reference, she either admits or denies these paragraphs as more particularly answered hereinabove.

62. For lack of information, she denies the allegations of Paragraph 62 of the Complaint.

63. For lack of information, she denies the allegations of Paragraph 63 of the Complaint.

64. For lack of information, she denies the allegations of Paragraph 64 of the Complaint.

[fol. 418] 65. For lack of information, she denies the allegations of Paragraph 65 of the Complaint.

66. Answering Paragraph 66 of the Complaint, she admits the adoption of the particular laws of the State of Mississippi set out therein, but denies that these were a package of legislation, and denies the allegations of purpose and effect thereof, and the other allegations contained in said paragraph.

67. She denies the allegations of Paragraph 67 of the Complaint and the subparagraphs thereunder.

68. She denies the allegations of Paragraph 68 of the Complaint.

69. Answering Paragraph 69 of the Complaint, she says that she applies the provisions of law and registering to all prospective voters, regardless of race or color or any other reason; and that she will continue to follow the requirements of said law in so doing; but she denies all of the other allegations contained in said paragraph, as amended.

70. Answering Paragraph 70 of the Complaint, she says that she will apply the registration laws of the state to all parties, and that she has not and will not use them to deny registration to any qualified applicant to vote, whether negro, white, or any other race; and that these have been, and are being applied by her without distinction of race or color.

This Defendant denies that Complainant is entitled to any relief in this action.

Mrs. Pauline Easley, Circuit Clerk and Registrar of Claiborne County. By Joe T. Drake, Jr., Attorney.

[fol. 419] By: Joe T. Patterson, Attorney General for the State of Mississippi. Will S. Wells, Dugas Shands, Guy N. Rogers and William A. Allain, Assistant Attorneys General of the State of Mississippi. Peter N. Stockett, Jr. and Charles Clark, Special Assistant Attorneys General for the State of Mississippi. By ——, ——, Attorneys of Record for Mrs. Pauline Easley, Defendant.

Certificate of service (omitted in printing.)

[fol. 420] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3312

[Title omitted]

ANSWER OF J. W. SMITH CIRCUIT CLERK AND REGISTRAR OF COAHOMA COUNTY—Filed May 13, 1963

Defendant, J. W. Smith, Circuit Clerk and Registrar of Coahoma County, hereinafter referred to as "this Defendant," says:

Answer to First Claim

(1) This Defendant denies that this Court has jurisdiction of this action.

(2) This Defendant denies the averments of Paragraph 2 of the Complaint.

(3) This Defendant admits the averments of Paragraph 3 of the Complaint with the exception that he denies that the State Board of Election Commissioners is an agency of the State of Mississippi within the purview of #601 (b) of the Civil Rights Act of 1960.

(4) This Defendant admits the averments of Paragraph 4 of the Complaint.

(5) This Defendant admits the averments of Paragraph 5 of the Complaint.

(6) This Defendant admits the averments of Paragraph 6 of the Complaint.

[fol. 421] (7) This Defendant admits the averments of Paragraph 7 of the Complaint.

(8) This Defendant admits the averments of Paragraph 8 of the Complaint.

(9) This Defendant admits the averments of Paragraph 9 of the Complaint.

(10) This Defendant denies that registrars of voters in Mississippi, including this Defendant registrar, are agents

of the Mississippi State Board of Election Commissioners and of the State of Mississippi; and denies that said registrars administer and enforce the Mississippi constitutional and statutory provisions which set out the requirements and procedures for the registration of voters. The said registrars are appointees, but not agents, of the Mississippi State Board of Election Commissioners. They perform only those duties imposed upon them by the statutes of Mississippi.

(11) This Defendant denies that all registrars of voters in the State of Mississippi since at least 1892 have been white citizens.

(12) This Defendant denies that there are now, or were at the time of the filing of the Complaint, approximately 8,376 whites registered on the registration books of Coahoma County, and denies that there are now, or were at the time of the filing of the Complaint, approximately 1,371 negroes registered on the registration books of Coahoma County. The registration books from which those figures were taken include the names of all whites and negroes registered on the registration books of Coahoma County [fol. 422] since 1949, except for a very few deletions, and include the names of countless whites and negroes who have died since 1949, or have moved from the county since 1949, and whose names have not been purged from the registration books. He also calls attention to the fact that the "voting age population" has no significance unless there is excluded therefrom the number of those whites and negroes twenty-one years and upwards who have not resided in Mississippi for two years and one year in the election district, or in the incorporated city or town in which he offers to vote. For answer to the remaining averments of Paragraph 12 of the Complaint, this Defendant hereby adopts the answers of the other Defendant registrars to the averments of Paragraph 12 of the Complaint as his answers thereto.

(13) This Defendant denies the averments of Paragraph 13 of the Complaint.

(14) This Defendant denies the averments of Paragraph 14 of the Complaint. Under the Constitution of the State of Mississippi prior to 1890, no inhabitant of this state who had not been duly registered according to the requirements thereof was a qualified elector.

(15) This Defendant denies the averments of Paragraph 15 of the Complaint.

(16) This Defendant denies the averments of Paragraph 16 of the Complaint except the averment that in 1890 a Mississippi Constitutional Convention adopted a new State Constitution.

(17) This Defendant denies the averments of Paragraph 17 of the Complaint. Section 244 of the 1890 Constitution of the State of Mississippi was designed to upgrade the electorate of Mississippi by requiring every elector, regard-
[fol. 423] less of his or her race, color, or previous condition of servitude, to be able to read any section of the Constitution of the State of Mississippi, or able to understand the same when read to him, or able to give a reasonable interpretation thereof.

(18) Registration has been a prerequisite for voting since the adoption of the 1869 Constitution of the State of Mississippi. New registrations are authorized by statute whenever the conditions specified in the statute exist.

(19) This Defendant denies the averments of Paragraph 19 of the Complaint.

(20) This Defendant denies the averments of Paragraph 20 of the Complaint and points out that any decline in negro registration was due to the fact that a declining percentage of negroes presented themselves to the registrars for registration. Apathy and the indifference of negroes toward the responsibilities of citizenship account for that fact.

(21) This Defendant denies the averments of Paragraph 21 of the Complaint. During the period of time from 1899 to 1952:

(a) Qualified negroes were allowed to register to vote in Coahoma County.

(b) Literate negroes were not required to interpret sections of the Mississippi Constitution as a condition to registration on the registration books of Coahoma County.

[fol. 424] (c) Qualified negro electors were not excluded from Democratic primary elections in Coahoma County.

(22) The decision of the United States Court of Appeals for the Fifth Circuit mentioned in Paragraph 22 of the

Complaint, was made in *Peay* v. *Cox*, 190 F.2d 123, which was a suit for an injunction against a registrar on the ground that he had misconstrued Section 244 of the Constitution of 1890 of the State of Mississippi by requiring applicants for registration who could read to interpret a section of that constitution as a condition precedent to registration. The decision was to the effect that appellants would have to first resort to the administrative remedies provided by the laws of Mississippi for those who claimed that they have been illegally denied registration by a registrar and the emphasis of the decision was on the fact that Mississippi has provided, for those who claim that they have been illegally denied registration by a registrar, an administrative remedy which is simple, cheap and effective.

(23) This Defendant admits that in 1951 a higher percentage of negroes of voting age were literate than in 1890.

(24) In 1952 a proposed amendment to Section 244 of The Constitution of the State of Mississippi, such as is described in Paragraph 24 of the Complaint, was passed by a two-thirds vote of each house of the Legislature, and was thereafter submitted to the voters in a general election. It failed because a majority of the qualified electors voting in the election did not vote for the proposed amend-
[fol. 425] ment, as was required for the adoption of an amendment to the constitution by Section 273 of the Constitution of the State of Mississippi.

(25) This Defendant denies the averments of the first sentence of Paragraph 25 of the Complaint. During the regular 1954 session of the Mississippi Legislature, a proposed amendment to Section 244 of the Constitution of 1890 of the State of Mississippi was adopted by the Senate, March 29, 1954, and by the House of Representatives, April 22, 1954. It reads as follows:

> "Section 244. Every elector shall, in addition to the foregoing qualifications be able to read and write any section of the Constitution of this State and give a reasonable interpretation thereof to the county registrar. He shall demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government.

"The person applying to register shall make a sworn, written application for registration on a form to be prescribed by the State Board of Election Commissioners, exhibiting therein the essential facts and qualifications necessary to show that he is entitled to register and vote, said application to be entirely written, dated and signed by the applicant in the presence of the county registrar, without assistance or suggestion from any person or memorandum whatever; provided, however, that if the applicant is unable to write his application by reason of physical disability, the same upon his oath of such disability, shall be [fol. 426] written at his unassisted dictation by the county registrar.

"Any new or additional qualifications herein imposed shall not be required of any person who was a duly registered and qualified elector of this state prior to January 1, 1954.

"The Legislature shall have the power to enforce the provisions of this section by appropriate legislation."

(26) This Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 26 of the Complaint.

(27) This Defendant denies the averments of Paragraph 27 of the Complaint. The proposed amendment to Section 244 of the Constitution of 1890 of the State of Mississippi plainly and clearly requires every qualified elector, regardless of his or her race, color, or previous condition of servitude, to be able to read and write any section of the Constitution of this state and to give a reasonable interpretation thereof. Its provisions bear on whites and blacks alike. If anyone is disqualified by reason thereof, his or her disqualification stems from his or her inability to read and write any section of the Constitution of this state and to give a reasonable interpretation thereof, not from his or her race, color, or previous condition of servitude.

(28) This Defendant denies the averments of Paragraph 28 except that Defendant admits that during the regular 1954 session of the Mississippi Legislature, a concurrent

resolution was adopted by the House of of Representatives, [fol. 427] April 7, 1954, and by the Senate, April 28, 1954, whereby The Legal Educational Advisory Committee was established and charged as follows:

> "Said committee shall formulate a plan or plans of legislation, prepare drafts of suggested laws, and recommend courses of action for consideration by the Legislature whereby the state may, by taxation or otherwise, provide education and/or assistance in obtaining education for all of its citizens *consistent with the provisions of the Constitution of the United States* and the Constitution of the State of Mississippi."

(29) This Defendant denies that in 1954 the Supreme Court declared that state operation of racially segregated schools was unconstitutional. As to the remaining allegations contained in this Paragraph having to do with the formation of citizens councils, their purpose and their projects, this Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, deny the same.

(30) This Defendant denies the allegations of Paragraph 30 except that Defendant admits that on September 7, 1954, the Legislature of the State of Mississippi was convened in Extraordinary Session to consider an amendment to the Constitution of the State of Mississippi, as recommended by The Legal Educational Advisory Committee and as set forth in the proclamation convening the session, which is the best evidence of its contents.

[fol. 428] (31) This Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments that on November 2, 1954, there were approximately 472,000 registered voters in Mississippi qualified to vote on the proposed amendment to Section 244 of The Constitution of 1890 of the State of Mississippi, and that of that number about ninety-five percent were white and fewer than five percent were negro, but if those averments be true the disparity in the voting strength of the whites and negroes was not due to their race, color or previous condition of servitude, but in large part to the apathy and indifference of the negroes toward their responsibilities of citizenship. The said proposed amendment was adopted

and an analysis of the returns of the election wherein it was adopted will show that the votes for and against its adoption were not predetermined by the race of the voters. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the averment about the comparative quality of educational facilities provided throughout the state.

(32) On December 21, 1954, a proposed amendment to Article 8 of The Constitution of the State of Mississippi, to be numbered Section 213-B, was adopted at the election held to consider the same. An analysis of the returns of the election will show that the votes for and against its adoption were not predetermined by the race of the voters.

(33) In January 1955, an extraordinary session of the Mississippi Legislature was convened for the purpose of [fol. 429] inserting into The Constitution of the State of Mississippi the amendments adopted in the election of November 2, 1954, and December 21, 1954, and for the other purposes set forth in the proclamation of Hugh White, Governor, dated December 29, 1954.

(34) This Defendant admits the adoption of Chapters 102 and 104 of the Laws of the extraordinary session of the Mississippi Legislature, 1955. Any inconsistent allegations of Paragraph 34 are denied.

(35) This Defendant denies the averments of Paragraph 35 of the Complaint. The more stringent requirements for registration put in force by the amendment to Section 244 of the 1890 Constitution of the State of Mississippi and the legislation adopted pursuant thereto apply to every Mississippian who applies for registration, regardless of his or her race, color or previous condition of servitude. The exemption from those additional requirements granted therein to those who had registered and were qualified electors of the state prior to January 1, 1954, was given to all who fell within such category, regardless of their race, color or previous condition of servitude. Every Mississippian who was eligible for registration prior to January 1, 1954, and who neglected to register prior to January 1, 1954, has only himself or herself—not his or her race, color or previous condition of servitude—to blame for the fact that he or she thereafter became subject to the more stringent requirements imposed by the amendment of Sec-

tion 244 of the Constitution of 1890 of the State of Mississippi and the legislation adopted pursuant thereto.

[fol. 430] (36) This Defendant admits that since 1955 he has enforced the requirements of Section 244, as amended, when negroes have attempted to register to vote, by requiring negroes to interpret sections of the Mississippi Constitution and to demonstrate their understanding of the duties and obligations of citizenship on the form prescribed by the State Board of Election Commissioners. Since 1955, he has also enforced the requirements of Section 244, as amended, when whites have attempted to register to vote, by requiring whites to interpret sections of the Mississippi Constitution and to demonstrate their understanding of the duties and obligations of citizenship on the forms prescribed by the State Board of Election Commissioners.

(37) This Defendant is without knowledge or information sufficient to form a belief as to the averments contained in Paragraph 37 of the Complaint, but if those averments be true the disparity in the voting strength of the whites and negroes was not due to their race, color or previous condition of servitude but was due in large part to the apathy and indifference of the negroes towards their responsibilities of citizenship.

(38) This Defendant denies the averments of Paragraph 38 of the Complaint except that he admits that registrars of voters may select the particular section of the Constitution of the State of Mississippi which an applicant for registration is called upon to read, write and interpret. The registrars are not vested with unlimited discretion to determine the qualifications of applicants for registration. Pursuant to the provisions of Section 248 of the Constitu-

[fol. 431] tion of 1890 of the State of Mississippi, which provides:

> "Suitable remedies by appeal or otherwise shall be provided by law, to correct illegal or improper registration and to secure the elective franchise to those who may be illegally or improperly denied the same,"

there has been enacted into law—

Section 2111 of the Code of 1942 Recompiled which provides that—

"If any registrar appointed by law to register votes, shall intentionally refuse or neglect to register any voter entitled to registration, or register any voter not entitled to registration, he shall be punished, on conviction, by imprisonment in the penitentiary not less than one year nor more than three years."

Section 3240 of the Code of 1942 Recompiled which requires the county election commissioners to meet on the Tuesday after the third Monday in March of every year and revise the registration books by erasing therefrom the names of all persons erroneously thereon and to register thereon the names of all persons who have only applied to be registered and have been illegally denied registration.

Section 3224 of the Code of 1942 Recompiled which provides:

"Any person denied the right to register as a voter may appeal from the decision of the registrar to the Board of Election Commissioners by filing with the [fol. 432] registrar on the same day of such denial or within five days thereafter, a written application for appeal."

Section 3226 of the Code of 1942 Recompiled which requires the county election commissioners to meet at the courthouse on the first Monday in October of every year to "hear and determine all appeals from the decisions of the registrar of their county, allowing or refusing the applications of electors to be registered; and they shall correct illegal or improper registrations, and shall secure the elective franchise, as effected by registration, to those who may be illegally or improperly denied the same."

Sections 3113 and 3226.5 of the Code of 1942 Recompiled which requires the county election commissioners to meet on the third Tuesday in May before the first primary election for congressmen in the years when congressmen are elected, and on the third Monday of July prior to any other regular election, and five days before any other election, and carefully revise the registration books by erasing therefrom the names of all persons erroneously thereon and to register thereon the names of all persons who have duly applied to be registered and have been illegally denied

registration, and to hear and determine any appeals which may have been perfected and which are pending on said dates from the decisions of the registrar of their county allowing or refusing the applications of persons to be registered.

Sections 3239 and 3226.5 of the Code of 1942 Recompiled which requires the county election commissioners to meet on the first Monday of October preceding a general election [fol. 433] and five days before any other election, and carefully revise the registration books by erasing therefrom the names of all persons erroneously thereon and to register thereon the names of all persons who have duly applied to be registered and have been illegally denied registration, and to hear and determine any appeals which may have been perfected and which are pending on said dates from the decisions of the registrar of their county allowing or refusing the application of persons to be registered.

Section 3227 of the Code of 1942 Recompiled which provides with respect to appeals taken pursuant to Section 3224—

> "All cases on appeals shall be heard by the Boards of Election Commissioners De Novo, and oral evidence may be heard by them; and they are authorized to administer oaths to witnesses before them; and they have power to subpoena witnesses, and to compel their attendance; to send for persons and papers; to require the sheriff and constables to attend them and to execute their process. The decisions of the commissioners in all cases shall be final as to questions of fact, but as to matters of law they may be revised by the circuit and Supreme Courts. The registrar shall obey the orders of the commissioners in directing a person to be registered, or a name to be stricken from the registration books."

Section 3228 of the Code of 1942 Recompiled which gives any elector aggrieved by the decision of the county election [fol. 434] commissioners the right of appeal to the Circuit Court, on the filing of a bill of exceptions thereto.

Section 3230 of the Code of 1942 Recompiled which provides—

"Should the judgment of the Circuit Court be in favor of the right of an elector to be registered, the Court shall so order, and shall, by its judgment, direct the registrar of the county forthwith to register him."

Statutes which give any elector aggrieved by any judgment of the Circuit Court against his right to be registered the right of appeal to the Supreme Court of Mississippi. Those statutes speak for themselves.

(39) This Defendant denies the averments of Paragraph 39 of the Complaint and asserts that the Constitution of the State of Mississippi is the best evidence of its contents. This Defendant would add that in selecting the various sections of the constitution for interpretation by applicants for registration, he makes his selections without regard to the race of the applicant.

(40) This Defendant points out that the states of the union were given, by the very first Article of the Constitution of the United States, the right and duty to prescribe the qualification of voters and hence the decision as to those qualifications must be left to the states and not usurped by the federal executive or judiciary. And now [fol. 435] having done that, he denies the averments of Paragraph 40 of the Complaint. He also says that the dangers and problems inherent in the times in which we live are such that the welfare of the nation requires a literate, and informed electorate. The franchise is too precious for misuse by those who don't understand the duties and obligations of citizenship under a constitutional form of government and who can't read or write and give a reasonable interpretation of a section of our constitution.

(41) This Defendant denies the averments of Paragraph 41 of the Complaint. For emphasis, he specifically denies that the Defendant registrars have misused, or are misusing, or will misuse the interpretation test and the duties and obligations test to unconstitutionally deny registration to otherwise qualified citizens because of their race or color. He specifically denies that the existence of the interpretation test and the duties and obligations test as voter qualifications in Mississippi, their enforcement, and the threat of their enforcement have deterred, are deterring and will continue to deter otherwise qualified negroes in Mississippi

from applying for registration to vote. Negroes, regardless of whether they are or are not qualified for registration, are not deterred from making application for registration by the existence, or the enforcement, of the interpretation test or the duties and obligation test.

(42) This Defendant denies that Section 244 of the Mississippi Constitution, as amended, is unconstitutional, and specifically denies the averments of subparagraphs (a), [fol. 436] (b), (c), (d), and (e) of Paragraph 42 of the Complaint. In addition, he reiterates the answers he has already made to those same averments as they appear elsewhere in the Complaint.

(43) This Defendant denies the averments of Paragraph 43 of the Complaint. This Defendant and his deputy will continue to enforce Section 244, as amended, and its implementing statutory provisions as qualifications for registration, but they will do so without discriminating between applicants on account of their race, color, or previous condition of servitude.

Answer to Second Claim

(44) This Defendant, in answer to Paragraph 44 of the Complaint, adopts his answers to Paragraphs 1 through 34, and to Paragraph 37, of the Complaint.

(45) During the regular 1960 session of the Mississippi Legislature, a resolution proposing an amendment to or change in Article 12 of the Mississippi Constitution of 1890 by adding thereto the following as Section 241-A thereof:

> "Section 241-A. In addition to all other qualifications required of a person to be entitled to register for the purpose of becoming a qualified elector, such person shall be of good moral character."

The resolution was adopted by the Senate, April 28, 1960, and by the House of Representatives, May 5, 1960. The amendment was submitted to the qualified electors of the state for ratification or adoption at an election held Novem- [fol. 437] ber 8, 1960, and was adopted. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments that on November 8, 1960, there were approximately 525,000 registered voters

in Mississippi qualified to vote on the proposed amendment to Section 241-A of The Constituion of 1890 of the State of Mississippi, and that of that number about ninety-five percent were white and fewer than five percent were negro but if those averments be true the disparity in the voting strength of the whites and negroes was not due to their race, color or previous condition of servitude, but was due in large part to the apathy and indifference of the negroes toward their responsibilities of citizenship. The said proposed amendment was adopted and an analysis of the returns of the election wherein it was adopted will show that the votes for and against its adoption were not predetermined by the race of the voters.

(46) This Defendant admits the averments of Paragraph 46 of the Complaint.

(47) This Defendant admits the allegations of Paragraph 47 of the Complaint except that this Defendant is without knowledge or information sufficient to form a belief as to the last sentence of said Paragraph.

(48) This Defendant admits the averments of Paragraph 48 of the Complaint but adds that such injunction such as is described therein as having been issued against the Registrar of Forrest County could be justifiably issued by any Court against this Defendant because this Defendant does not engage, and never has engaged, in discriminatory acts and practices based on race in the registration for voting in Coahoma County. If the Registrar of Forrest County has engaged in discriminatory acts and [fol. 438] practices based on race in the registration for voting in Forrest County, which this Defendant denies, that fact, if it be a fact, can in no way prejudice this Defendant and is immaterial and impertinent to this suit.

(49) This Defendant denies the allegations of Paragraph 49 of the Complaint, except this Defendant admits that the Mississippi Legislature adopted, in 1962, House Bill No. 899, Chapter 575, General Laws of Mississippi 1962; House Bill No. 905, Chapter 569, General Laws of Mississippi 1962; House Bill No. 822, Chapter 572, General Laws of Mississippi 1962; and House Bill No. 904, Chapter 573, General Laws of Mississippi 1962, but asserts that said House Bills are the best evidence of their contents.

(50) This Defendant denies the averments of Paragraph 50 of the Complaint. The requirement that a person to be entitled to register for the purpose of becoming a qualified elector shall be of good moral character applies to every Mississippian who applies for registration, regardless of his or her race, color, or previous condition of servitude. Registration to vote is not unconstitutionally denied or abridged on account of race, color, or previous condition of servitude, by the fact that those offering to register prior to the effective date of the legislation implementing Section 241-A of he Constitution of the State of Mississippi were not required to be of good moral character and those offering to register subsequent to such date are, and have been, subject to such requirement. That fact is applicable to all citizens, regardless of race, color, or previous condition of servitude. Every Mississippian who was eligible for registration prior to to such date, and who neglected to register [fol. 439] prior to such date, has only himself or herself—not his or her race, color, or previous condition of servitude—to blame for the fact that he or she thereafter became subject to such requirement.

The good moral character requirement for registration is no more a device for discrimination against negroes than is the good moral character requirement for naturalization a device for discrimination against aliens. It does not constitute a means of discrimination which would make detection more difficult.

(51) This Defendant denies the averments of Paragraph 51 of the Complaint. Section 241-A of the Constitution of the State of Mississippi does not vest unlimited discretion in the registrars of voters to determine the good moral character of applicants for registration. The requirement is neither vague nor indefinite. It neither enables nor requires the registrars to arbitrarily determine:

(a) What acts, practices, habits, customs, beliefs, relationships, moral standards, ideas, associations, attitudes and demeanor evidence bad moral character and what weight should be given to each.

(b) What is evidence of good moral character and what weight should be given to affirmative evidence of it, such as school record, church membership, military

service, club memberships, personal, social and family relationships, civic interest, absence of criminal record.

[fol. 440](c) What periods of the applicant's life are to be examined for evidence relating to his character—whether the applicant's conduct during a remote period of his life is to be considered.

(d) What sources, if any, such as public records, public officials, private individuals—negro and white—will be consulted in determining the character of the applicant; or whether the determination will be made on the basis of personal knowledge, impression, newspaper accounts, rumors, or otherwise.

The phase "good moral character," has a definite and well defined meaning, although like many such phrases its meaning can be better stated in conjunction with specific facts which bear thereon than in words designed as a formula for every occasion wherein the question of one's good moral character arises. As Congress found when it undertook to define "good moral character" in the statute which is *Section 1101 of Title 8 of U.S.C.A.*, it is necessary, in formulating such a definition, to list offenses, the commission of which prevents one from being regarded as of good moral character, and then add, just as Congress did,

> "The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character."

[fol. 441] Such discretion as is vested in a registrar by reason of Section 241-A of the Constitution of Mississippi and the legislation which implements it is limited, restricted and qualified by the statutes which have been enacted into law pursuant to Section 248 of the Constitution of 1890 of the State of Mississippi and which are set forth in Paragraph 38 of this Answer.

(52) This Defendant denies the averments of Paragraph 52 of the Complaint. Neither the existence of the character qualification, its enforcement, or the threat of its enforcement, have deterred, or are deterring, or will continue to deter qualified negro citizens in Mississippi from applying

to register to vote. No otherwise qualified negro has been deprived, or will be deprived, of his or her right to register because of the threatened use, or the use, of the character requirement. No such deprivation has occurred since the adoption of the character requirement.

(53) This Defendant denies the averments of Paragraph 53 of the Complaint. The fallacies in the specifics therein have already been pointed out.

(54) This Defendant denies the averments of Paragraph 54 of the Complaint. This Defendant and his deputy will, unless restrained by order of this Court, continue to enforce Section 241-A and its implementing statutory provisions as a qualification for registration to vote, but he adds that he will, in continuing to enforce said section and said statutory provisions, continue to do so in the manner he has hereinbefore outlined and not in the manner erroneously ascribed to him by Plaintiff.

[fol. 442] Answer to Third Claim

(55) This Defendant, in answer to Paragraph 55 of the Complaint, adopts his answers to Paragraphs 1 through 34, and to Paragraph 37, and to Paragraphs 45 through 49, of the Complaint.

(56) This Defendant admits the adoption of Chapter 102 of the Laws of the Extraordinary Session 1955.

(57) This Defendant denies the allegations of Paragraph 57 except that this Defendant admits the adoption of the legislation which is now Section 1971 of Title 42 of the U.S.C.A.

(58) This Defendant denies the allegations of Paragraph 58 except that this Defendant admits that Congress adopted Section 1974 of Title 42 of U.S.C.A. on May 6, 1960. He also admits that the Mississippi Legislature adopted Chapter 449 of the Laws of 1960. And he points out that the latter was adopted April 15, 1960, prior to the adoption of the former and its provisions are permissive and not mandatory.

(59) This Defendant, although he admits that some forms received by a registrar may have been destroyed in ignorance of Section 1974 of Title 42 of U.S.C.A., denies the averments of Paragraph 59 of the Complaint.

(60) This Defendant denies the averments of Paragraph 60 of the Complaint. Certainly this Defendant has not heretofore destroyed voter registration records in violation of Section 1974 of Title 42 of U.S.C.A., and he has no intention of doing so.

Answer to Fourth Claim

(61) This Defendant, in answer to Paragraph 61 of the Complaint, adopts his answers to Paragraphs 1 through [fol. 443] 34, to Paragraph 37, to Paragraphs 45 through 49, and to Paragraphs 56 through 58, of the Complaint.

(62) This Defendant denies the averments of Paragraph 62 of the Complaint except that he admits that in 1962 negroes were candidates for the office of representative in the Congress of the United States.

(63) This Defendant supposes the averments of Paragraph 63 of the Complaint are true but he also assumes that many explanations, in addition to the explanation set forth in said Paragraph, were also made to the Court in that case. In any event, this Defendant denies that the explanations of counsel for Plaintiff made to the Court in that case had the repercussions attributed to it by Plaintiff. The explanations to the Court of counsel for Plaintiff in the case mentioned in said Paragraph are of small importance, even of no importance, to the people of Mississippi, and any results therefrom have been limited to actions taken in that particular case.

(64) This Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 64 of the Complaint, but regardless of any actions which the registrar of Forrest County may have taken in passing on such applications—which actions of the registrar of Forrest County can in no way prejudice this Defendant or any other Defendant herein—that this Defendant has not knowingly or intentionally turned down any application to register because of the omission of applicant's precinct, the failure to sign the oath to the applica- [fol. 444] tion, or the failure to sign on the line below the minister's oath on Page 3 of the application, and he also knows that he has required all white applicants to fill out application forms in the same manner as that required of negro applicants. This Defendant denies that any act of

Congress can constitutionally regulate the conduct of registration of voters in Coahoma County done in pursuance of and in obedience to the existing Laws of the State of Mississippi on the basis of what is done or omitted by some other registrar in some other place or at some other date.

(65) This Defendant denies the allegations of Paragraph 65 of the Complaint, except this Defendant admits that on April 10, 1962, the United States Court of Appeals for the Fifth Circuit granted an injunction pending appeal against the Registrar of voters of Forrest County, Mississippi and the State of Mississippi, and asserts that said injunction is the best evidence of its contents. If the statutes under which such suit was brought are constitutional, they demonstrate that effective legal machinery exists to enable Plaintiff to protect the rights of all citizens to equal treatment before the law.

(66) This Defendant denies the allegations of Paragraph 66 of the Complaint, except that this Defendant admits that the Mississippi Legislature adopted during its 1962 session House Bill 900, House Bill 901, House Bill 905, House Bill 822, House Bill 904, and House Bill 903, and asserts that said House Bills are the best evidence of their respective contents.

(67) House Bills 900 and 903 are not unconstitutional.

(1) It is misconstruction of House Bill 900 to say [fol. 445] that it establishes as grounds for disqualification any formal, technical, or inconsequential error or omission by the applicant on the application forms. The correct construction of the statute is that every applicant for registration, be he white or black, must show by his or her answers to the questions on the application form—which he or she must give without assistance or suggestion from any person or memorandum whatever so that every possibility of preferred treatment of any class of applicants may be obviated—the essential facts and qualification which qualify him or her for registration, to-wit: that he or she is twenty-one years old (or will be before the next election in the county), that he or she has resided in this state two years and in a specified election district, or incorporated city or town, one year next preceding the ensuing election (or if applicant is a minister of a gospel

in charge of an organized church, that he has resided in this state two years and in a specified election district, or incorporation city or town, six months next preceding the ensuing election), that he or she is not disqualified by reason of having been convicted of any crime named in Section 241 of the Constitution of Mis-
[fol. 446] sissippi as a disqualification to be an elector, that he or she is able to read and write any section of the constitution of this state and give a reasonable interpretation thereof, that he or she has a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government, and that he or she is a person of good moral character. If an application demonstrates those facts, the applicant is entitled to register.

(2) The requirements of these statutes apply to every Mississippian who applies for registration, regardless of his or her race, color, or previous condition of servitude. Every negro who was eligible for registration prior to their adoption and who neglected to register has only himself or herself—not his or her race, color, or previous condition of servitude—to blame for the fact that he or she is subject to such requirements.

(3) The application form contains simple questions which are quite easy to answer and all of such questions are designed to elicit the information necessary to a determination of one's qualifications to register. Their use should be commended by Plaintiff as an additional safeguard against any possibility of discrimination against any individual applicant who might present himself or herself to the registrar for registration.

[fol. 447] (4) There is no necessity for spelling out what is meant by filling out an application form "properly and responsively." Everyone knows what is meant thereby. Nor is there any need for defining which questions elicit the "essential facts and qualifications to entitle a person to register to vote." Those essential facts and qualifications are set forth in the statutes. The questions which call for information which bears

on those facts and qualifications are obviously the questions which elicit those essential facts and qualifications.

(5) The requirement that the oath and signature on the application form be signed without assistance or suggestion is neither arbitrary nor unreasonable and is not a device to trap applicants into an omission which will serve as grounds for disqualification.

(6) The prohibition against informing applicants or allowing applicants to learn of the reason or reasons for their disqualification as voters is neither unreasonable nor arbitrary, is not contrary to any legitimate state interest, and is not inconsistent with fundamental principles of democracy.

House Bills 822 and 904 are not unconstitutional.

(1) These statutes no more vest authority in white citizens to harass negroes and to delay the registration of negroes than they vest authority in negro citizens [fol. 448] to harass white citizens and to delay the registration of white citizens. Any challenge to the qualifications of an applicant for registration must be on the ground that he or she is not of good moral character or does not possess one of the essential qualifications for registration, and the challenge must be accompanied by an affidavit setting forth the facts on which the challenge is based.

(2) These statutes do not impose onerous, arbitrary and unreasonable procedures on prospective registrants who are challenged by requiring them to appear and possibly assume the cost of an administrative hearing before their qualifications to vote are determined. If an applicant is qualified to register, he or she will not be assessed with costs. If an applicant is not qualified to register, it is not unreasonable that he or she should be assessed with the costs, which are nominal.

(3) The standards by which a registrar passes initially upon an applicant's qualifications to register are the standards to be employed if any applicant's right to register is challenged.

(4) The requirements of these statutes apply to every Mississippian who applies for registration, regardless of his or her race, color, or previous condition of [fol. 449] servitude. Every negro who was eligible for registration prior to their adoption and who neglected to register, has only himself or herself—not his or her race, color, or previous condition of servitude—to blame for the fact that he or she is subject to such requirements.

(5) Whatever power a registrar has to forestall an applicant's registration by taking the decision on a challenge to his or her right to registration under advisement, he has with respect to both white and negro applicants. And a reading of House Bill 904 will disclose that his right to take the matter under advisement is "just as a court may do." To describe it as an "unlimited power" is quite an exaggeration.

(6) These statutes do not impose arbitrary and unreasonable requirements on prospective registrants. It is neither unreasonable nor arbitrary to require one whose right to exercise the privilege of voting has been challenged by a qualified elector, with such challenge backed up by an affidavit setting forth the facts supporting the challenge, to meet the challenge to his or her right to exercuse the privilege of voting. And it is quite important to this state and nation that the right of suffrage be protected from those who have no right under the law to exercise such right.

[fol. 450] (7) It was not the purpose and it has not been the effect of these statutes to give the white community of Mississippi the legal right to pass initially upon the qualifications and character of negro applicants for registration or to give the white community of Mississippi the opportunity to intimidate negro applicants for registration, any more than it was the purpose or that it has been the effect of these statutes to give the negroes of Mississippi the legal right to pass initially upon the qualifications and character of white applicants for registration or to give the negroes of Mississippi the opportunity to intimidate white applicants for registration. Yet the statutes give the

right of challenge to any qualified elector, he be or she white or negro, and require the publication of the names of all applicants, regardless of their race or color.

(68) This Defendant denies the averments of Paragraph 68 of the Complaint and points out that he has already specifically answered most of those averments. He adds that Plaintiff has confused racial segregation with racial discrimination. They are not the same.

(69) This Defendant admits that he and the other registrars are required to apply the requirements of the statutes of this state but he denies that those requirements are [fol. 451] onerous or that their existence, enforcement and threat of enforcement have deterred, are deterring or will continue to deter otherwise qualified negroes from applying to register. He also points out that he has not knowingly disqualified any applicant, negro or white, for any formal or technical error or omission on the application form, and that the publication of the names of applicants for registration has never resulted in Coahoma County in any challenge to an applicant. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation as to what other registrars may have done.

(70) This Defendant denies the averments of Paragraph 70 of the Complaint but admits that he and his deputy, unless restrained by order of this Court, will continue to enforce the registration requirements of this state. He denies that the effect of those requirements has been and is to deprive otherwise qualified negro citizens of their right to register without distinction of race or color.

(71) Since the State of Mississippi has exclusive right and perogative to prescribe the qualifications of voters (cf. the first Article of and the tenth amendment to the Constitution of the United States) subject only to the limitation that such qualifications do not violate the Fourteenth, Fifteenth, or Nineteenth Amendment to the Constitution of the United States, and since the qualifications of voters set forth in those sections of the Constitution and Statutes of the State of Mississippi, mentioned herein do not deprive [fol. 452] any person of life, liberty or property without due process of law, do not deny to any person within the jurisdiction of Mississippi the equal protection of the laws,

do not deny or abridge the right of citizens of the United States to vote on account of race, color or previous condition of servitude, and do not deny the right of any citizen of the United States to vote on account of sex, the provisions of the Constitution and Statutes of Mississippi mentioned herein are valid and constitutional, and should be so declared by judgment of this Court.

(72) Since this Defendant, in carrying out his duties as Registrar of Coahoma County, has not discriminated against any applicant for registration on the registration books of Coahoma County on account of his or her race, color, or previous condition of servitude, i. e.,

(a) He has given negro applicants the right to make application for registration on the same basis as white applicants;

(b) He has processed applications for registration submitted by negro applicants on the same basis as applications submitted by white applicants;

(c) He has registered negro applicants on the same basis as white applicants;

(d) He has given negro applicants the right to be registered by the same office personnel and with the same expedition and convenience as are being permitted to white applicants, and he has extended to negro applicants the same privileges as to reviewing [fol. 453] their application forms at the time they are filled out and advising them of such omissions as appear on their forms as he has given to white applicants under similar circumstances;

(e) He has administered the constitutional interpretation test to negro applicants by choosing as sections to be read and interpreted substantially the same sections used for submission to white applicants;

(f) He has not required rejected negro applicants to wait any different period before reapplying for registration than may be authorized under the laws of Mississippi and other than is required by white applicants.

(g) He has not required of any applicant a demonstration of good moral character other than a response to

the question, Have you ever been convicted of any other crime, that is, a crime other than bribery, theft, arson, obtaining money or goods under false pretenses, perjury, forgery, embezzlement, or bigamy, (excepting misdemeanors for traffic violation)?

(h) He has not destroyed voter registration records in violation of Section 1974 of Title 42 of U.S.C.A. and has no intention of doing so;

(i) He has not knowingly and intentionally turned [fol. 454] down any application to register because of any inconsequential errors therein, such as the omission of the applicant's precinct, the failure to sign the oath of the application, or the failure to sign on the line below the minister's oath on Page 3 of the application;

(j) He has tried in the utmost good faith to comply with the laws governing the administration and conduct of his office and if any person of any race was ever unjustly or improperly treated by this Defendant or any of his deputies such treatment occurred without any purposeful intention or conscious knowledge of racial discrimination.

this Court should find that he has not deprived negroes of any right secured to them by Section 1971 (a) of Title 42 of U.S.C.A. and should adjudge that Plaintiff is not entitled to an injunction against him such as is prayed in the Complaint or to the order prayed in the Complaint.

First Defense

The Complaint fails to state a claim against this Defendant upon which relief can be granted.

Second Defense

This Court as composed lacks jurisdiction over the subject matter of this action and over this Defendant.

Wherefore, this Defendant prays a judgment that the Statutes and Sections of the Constitution of the State of Mississippi mentioned in the Complaint are constitutional,

[fol. 455] a finding that this Defendant has not deprived negroes of any right secured to them by Section 1971 (a) of Title 42 of U.S.C.A., an adjudication that Plaintiff is not entitled to the injunction or order sought against this Defendant, for a dismissal of the Complaint against this Defendant, and for the assessment of costs against Plaintiff.

J. W. Smith, Circuit Clerk and Registrar of Coahoma County, Mississippi. By Semmes Luckett, Attorney at Law Clarksdale, Mississippi. Chester Curtis, Attorney at Law Clarksdale, Mississippi. Leon Porter, Attorney at Law Clarksdale, Mississippi.

Certificate of service (omitted in printing.)

[fol. 456] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3312

[Title omitted]

ANSWER ON BEHALF OF THE STATE OF MISSISSIPPI—

Filed May 13, 1963

First Defense

The Complaint fails to state a claim against this Defendant upon which relief can be granted.

Second Defense

This Court as composed lacks jurisdiction over the subject matter of this action and over this Defendant.

Third Defense

Answer to First Claim

1. This Defendant denies the allegations of Paragraph 1 of the Complaint.

2. This Defendant denies the allegation of Paragraph 2 of the Complaint, and would state that the State of Mississippi is not a proper party to this action and cannot be joined as a party Defendant for the reason that Section 601 (b) of the Civil Rights Act of 1960 is unconstitutional on its face.

[fol. 457] 3. This Defendant admits that Ross R. Barnett, Joe T. Patterson and Heber A. Ladner are members of the Mississippi State Board of Election Commissioners by virtue of their official positions as Governor, Attorney General and Secretary of State, respectively, and admits that the offices of said Defendants are in the State Capitol, Jackson, Mississippi, but denies that the State Board of Election Commissioners is an agency of the Defendant State of Mississippi.

4. This Defendant admits the allegations of Paragraph 4 of the Complaint.

5. This Defendant admits the allegations of Paragraph 5 of the Complaint.

6. This Defendant admits the allegations of Paragraph 6 of the Complaint.

7. This Defendant admits the allegationo sf Paragraph 7 of the Complaint.

8. This Defendant admits the allegations of Paragraph 8 of the Complaint.

9. This Defendant admits the allegations of Paragraph 9 of the Complaint.

10. This Defendant denies that registrars of voters in Mississippi are agents of the Mississippi State Board of Election Commissioners and of the State of Mississippi; and denies that said registrars administered and enforced the Mississippi Constitutional and Statutory Provisions which set out the requirements and procedures for the registration of voters. The said registrars are appointees, but [fol. 458] not agents, of the Mississippi State Board of Election Commissioners. They perform only those duties imposed upon them by the statutes of Mississippi.

11. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11 of the Complaint.

12. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 of the Complaint.

13. This Defendant denies the allegations of Paragraph 13 of the Complaint.

14. This Defendant denies the allegations of Paragraph 14 of the Complaint.

15. This Defendant denies the allegations of Paragraph 15 of the Complaint.

16. This Defendant denies the allegations of Paragraph 16 of the Complaint, except this Defendant admits that in 1890 a Mississippi Constitutional Convention adopted a new State Constitution.

17. This Defendant denies the allegations of Paragraph 17 except that this Defendant admits that the Mississippi Constitution of 1890 contains Section 244, and asserts that said Section itself is the best evidence of its content. (See Appendix I)

18. This Defendant admits that registration has been a prerequisite for voting since at least 1892, in fact, since the Constitution of 1869, in any election in Mississippi. This Defendant denies that registration in Mississippi is [fol. 459] permanent and affirmatively states that new registrations are authorized by statute whenever the conditions specified in the statutes exist.

19. This Defendant denies the allegations of Paragraph 19 of the Complaint.

20. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 of the Complaint.

21. This Defendant denies the allegation of Paragraph 21 o the Complaint and each of the subparagraphs thereunder.

22. This Defendant denies the allegations of Paragraph 22 except that this Defendant admits that the Court of Appeals for the Fifth Circuit in the case of *Peay* v. *Cox*, 190 F. 2d 123, spoke in dicta of the either/or elements of Section 244 of the Mississippi Constitution of 1890. The rationale of this case was that where an administrative

remedy is available it must be exhausted before injunction may be had to control the registrar in the conduct of his office.

23. This Defendant admits the allegations of Paragraph 23 of the Complaint.

24. This Defendant admits that in 1952 the Mississippi Legislature passed a joint resolution proposing an amendment to Section 244 of the Mississippi Constitution of 1890, but asserts that said resolution itself is the best evidence of its content. (See Appendix II) This Defendant further [fol. 460] admits that the proposed amendment was submitted to the voters in a general election but was not adopted for the reason that a majority of the qualified electors voting in said election did not vote for the proposed amendment.

25. This Defendant denies that the Legislature of the State of Mississippi did not meet in 1953, and affirmatively states that said Legislature did meet in 1953 in an extraordinary session. This Defendant denies the remainder of the allegations contained in Paragraph 25 of the Complaint except that this Defendant admits that the Legislature of the State of Mississippi adopted by a concurrent resolution a proposed amendment to Section 244 of the Constitution of 1890 of the State of Mississippi, being Senate Concurrent Resolution No. 13, Chapter 427 of the General Laws of Mississippi of 1954, and asserts that said resolution, itself, is the best evidence of its content. (See Appendix III)

26. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 26 of the Complaint.

27. This Defendant denies the allegations of Paragraph 27 of the Complaint. The proposed amendment to Section 244 of the Constitution of 1890 of the State of Mississippi was designed to upgrade the electorate of Mississippi by requiring every person seeking to become a qualified elector, regardless of his or her race, color, or previous condition of servitude, to be able to read and write any section of the Constitution of this State and to give a reasonable [fol. 461] interpretation thereof. Its provisions bear on persons alike regardless of race, color or previous condition of servitude. If anyone is disqualified by reason thereof,

his or her disqualification stems from his or her inability to read and write any section of the Constitution of this State and to give a reasonable interpretation thereof, not from his or her race, color, or previous condition of servitude.

28. This Defendant denies the allegations of Paragraph 28 except that this Defendant admits that during a regular 1954 session of the Mississippi Legislature, a concurrent resolution was adopted by the House of Representatives, April 7, 1954, and by the Senate, April 28, 1954, which established the Legal Educational Advisory Committee, and asserts that said resolution is the best evidence of its content. (See Appendix IV)

29. This Defendant denies that in 1954 the Supreme Court declared that state operation of racially segregated schools was unconstitutional. As to the remaining allegations contained in this paragraph having to do with the formation of citizens councils, their purpose and their projects, this Defendant is without knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, deny the same.

30. This Defendant denies the allegations of Paragraph 30 of the Complaint, except that this Defendant admits the Mississippi Legislature met in September of 1954 in an [fol. 462] extraordinary session and adopted House Concurrent Resolution No. 2, Chapter 39, General Laws of Mississippi, Extraordinary Session of 1954 and 1955, and asserts that said resolution is the best evidence of its contents. (See Appendix V)

31. This Defendant admits the allegations of Paragraph 31 except that this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations that on November 2, 1954, there were approximately 472,000 registered voters in Mississippi who were eligible to vote on the proposed amendment to Section 244 of the Mississippi Constitution of 1890, and that about 95% of said voters were white and fewer than 5% were negroes. This Defendant also denies that the amendment was adopted in a state where the public education facilities provided for negroes were and/or are inferior to those provided for white people.

32. This Defendant denies the allegations of Paragraph 32, except that this Defendant admits that on December 21, 1954, a proposed amendment to the Mississippi Constitution designated Article 8, Section 213-B was submitted to and approved by the voters, and asserts that said amendment is the best evidence of its contents.

33. This Defendant admits the allegations of Paragraph 33 and affirmatively states that said extraordinary session was also called for the other purposes set forth in the proclamation of Hugh White, Governor, dated December 29, 1954.

[fol. 463] 34. This Defendant denies the allegations of Paragraph 34 of the Complaint, except this Defendant admits that the Mississippi Legislature adopted House Bill No. 95, Chapter 102, and Senate Bill No. 1216, Chapter 104, of the Laws of the Extraordinary Session of the Mississippi Legislature, 1955, and asserts that said House Bill and Senate Bill are the best evidence of their contents. (See Appendix VI-A and VI-B)

35. This Defendant denies the allegations of Paragraph 35 of the Complaint.

36. This Defendant admits the allegations of Paragraph 36 of the Complaint. This Defendant is informed and believes that all registrars of voters in the State of Mississippi have enforced the provisions of Section 244, as amended, since its amendment when members of the white race have attempted to register to vote.

37. This Defendant is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 37 of the Complaint.

48. This Defendant denies the allegations of Paragraph 38 of the Complaint and all subparagraphs thereunder.

39. This Defendant denies the allegations of Paragraph 39 of the Complaint and asserts that the Constitution of the State of Mississippi is the best evidence of its contents.

40. This Defendant denies the allegations of Paragraph 40 of the Complaint.

41. This Defendant denies the allegations of Paragraph 41 of the Complaint.

42. This Defendant denies the allegations of Paragraph 42 of the Complaint and the subparagraphs thereunder.

[fol. 464] 43. This Defendant denies the allegations of Paragraph 43 of the Complaint as to the acts and actions of this Defendant.

Answer to Second Claim

44. This Defendant, in answer to Paragraph 44 of the Complaint, adopts its answers to Paragraphs 1 through 34, and to Paragraph 37, of the Complaint.

45. This Defendant denies the allegations of Paragraph 45 of the Complaint except that this Defendant admits that in 1960, the Mississippi Legislature passed a joint resolution to amend Article 12 of the Constitution of 1890, to include a new section (241-A) which resolution is the best evidence of its contents, and this Defendant admits that on November 8, 1960, the proposed addition to Article 12 of the Constitution was submitted to and adopted by the voters. (See Appendix VII) This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations that approximately 525,000 registered voters in Mississippi were eligible to vote on said proposed amendment and that about 95% were white and fewer than 5% were negro.

46. This Defendant admits the allegations of Paragraph 46 of the Complaint.

47. This Defendant admits the allegations of Paragraph 47 of the Complaint except that this Defendant is without knowledge or information sufficient to form a belief as to the last sentence of said paragraph.

[fol. 465] 48. This Defendant admits the allegations of Paragraph 48 of the Complaint.

49. This Defendant denies the allegations of Paragraph 49 of the Complaint, except this Defendant admits that the Mississippi Legislature adopted, in 1962, House Bill No. 899, Chapter 575, General Laws of Mississippi 1962; House Bill No. 905, Chapter 569, General Laws of Mississippi 1962; House Bill No. 822, Chapter 572, General Laws of Mississippi 1962; and House Bill No. 904, Chapter 573, General Laws of Mississippi 1962, but asserts that said House Bills are the best evidence of their contents. (See Appendix VIII-A, VIII-B, VIII-C, and VIII-D)

50. This Defendant denies the allegations of Paragraph 50 of the Complaint and the subparagraphs thereunder. (See Appendix IX)

51. This Defendant denies the allegations of Paragraph 51 of the Complaint and the subparagraphs thereunder.

52. This Defendant denies the allegations of Paragraph 52 of the Complaint.

53. This Defendant denies the allegations of Paragraph 53 of the Complaint and the subparagraphs thereunder.

54. This Defendant denies the allegations of Paragraph 54 of the Complaint as to the act and action of this Defendant.

[fol. 466] Answer to Third Claim

55. This Defendant, in answer to Paragraph 55 of the Complaint, adopts its answer to Paragraphs 1 through 34, and to Paragraph 37 and to Paragraphs 45 through 49, of the Complaint.

56. This Defendant denies Paragraph 56 of the Complaint, except that this Defendant admits that the Mississippi Legislature, in 1955, adopted House Bill No. 95, Chapter 102, General Laws of Mississippi, extraordinary sessions of 1954 and 1955, but asserts that said House Bill is the best evidence of its contents. (See Appendix VI-A)

57. This Defendant denies the allegations of Paragraph 57 of the Complaint, except this Defendant admits that in 1957 the Congress of the United States enacted the Civil Rights Act of 1957, but asserts that said Act itself constitutes and contains the best evidence of its contents. This Defendant denies that said act vest the Attorney General of the United States with authority to bring civil actions to protect the right to vote without *distinction* of race or color.

58. This Defendant denies the allegations of Paragraph 58 of the Complaint, except this Defendant admits that in 1960, the Congress of the United States passed Title III of the 1960 Civil Rights Act on May 6, 1960; that the Mississippi Legislature, in 1960, adopted House Concurrent Resolution No. 36, Chapter 510, General Laws of Mississippi 1960; the Mississippi Legislature, in 1960, enacted [fol. 467] Senate Bill No. 1883, Chapter 449, General Laws of Mississippi 1960, effective date April 15, 1960, but asserts that said acts and resolution themselves are the best evidence of their respective contents. (See Appendix X-A and X-B)

59. This Defendant denies the allegations of Paragraph 59 of the Complaint except that this Defendant admits that it is advised that some registration application forms, including some forms received by Defendant, H. K. Whittington in Amite County, Mississippi, have been destroyed.

60. This Defendant denies the allegations of Paragraph 60 of the Complaint.

Answer to Fourth Claim

61. This Defendant, in answer to Paragraph 61 of the Complaint, adopts its answers to Paragraphs 1 through 34, to Paragraph 37, to Paragraphs 45 through 49, and to Paragraphs 56 through 58, of the Complaint.

62. This Defendant denies the allegations of Paragraph 62 of the Complaint.

63. This Defendant admits the allegations of Paragraph 63 of the Complaint.

64. This Defendant denies the allegations of Paragraph 64 of the Complaint, except this Defendant admits that in March, 1962, the second hearing was held in the United States District Court for the Southern District of Mississippi on a motion for a preliminary injunction in an action by the United States against the Registrar of voters of [fol. 468] Forrest County, and asserts that the record of said hearing is the best evidence of said proceedings.

65. This Defendant denies the allegations of Paragraph 65 of the Complaint, except this Defendant admits that on April 10, 1962, the United States Court of Appeals for the Fifth Circuit granted an injunction pending appeal against the Registrar of voters of Forrest County, Mississippi and the State of Mississippi, and asserts that said injunction is the best evidence of its contents.

66. This Defendant denies the allegations of Paragraph 66 of the Complaint, except that this Defendant admits that the Mississippi Legislature adopted during its 1962 session House Bill 900, House Bill 901, House Bill 905, House Bill 822, House Bill 904, and House Bill 903, and asserts that said House Bills are the best evidence of their respective contents. (See Appendix XI-A, XI-B, XI-C, XI-D, XI-E, and XI-F)

67. This Defendant denies the allegations of Paragraph 67 of the Complaint and the subparagraphs thereunder.

68. This Defendant denies the allegations of Paragraph 68 of the Complaint.

69. This Defendant denies the allegations of Paragraph 69 of the Complaint.

70. This Defendant denies the allegations of Paragraph 70 of the Complaint.

This Defendant denies that Complaintant is entitled to [fol. 469] any relief in this action.

State of Mississippi, by: Joe T. Patterson, Attorney General for the State of Mississippi, Jackson, Mississippi. Will S. Wells, Dugas Shands, Guy N. Rogers and William A. Allain, Assistant Attorneys General for the State of Mississippi. Peter M. Stockett, Jr. and Charles Clark, Special Assistant Attorneys General for the State of Mississippi. By: /s/ Charles Clark, Special Assistant Attorney General for the State of Mississippi, one of the Attorneys of Record for Defendants.

Certificate of service (omitted in printing.)

[fol. 470] APPENDIX I TO ANSWER

Section 244 of the Constitution of the State of Mississippi

Section 244. Every elector shall, in addition to the foregoing qualifications be able to read and write any section of the Constitution of this State and give a reasonable interpretation thereof to the county registrar. He shall demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government.

The person applying to register shall make a sworn, written application for registration on a form to be prescribed by the state board of election commissioners, exhibiting therein the essential facts and qualifications necessary to show that he is entitled to register and vote, said application to be entirely written, dated and signed by the applicant in the presence of the county registrar, without assistance or suggestion from any person or memorandum whatever; provided, however, that if the applicant is unable to write his application by reason of physical disability, the same, upon his oath of such disability, shall be written at his unassisted dictation by the county registrar.

[fol. 471] APPENDIX II TO ANSWER

House Concurrent Resolution No. 33

A Concurrent Resolution to amend section 244 of the Constitution of 1890 of the State of Mississippi so as to more fully prescribe qualifications of electors.

Be it Resolved by the House of Representatives, the Senate Concurring therein, That the following amendment to the Constitution of 1890 of the State of Mississippi, be submitted to the qualified electors of the state for ratification or rejection at an election to be held on the first Tuesday after the first Monday in November, A.D., 1952 viz:

Amend section 244 of the Constitution of 1890 of the State of Mississippi to read as follows:

Section 244. Every elector shall, in addition to the foregoing qualifications, be able to read and write any section of the Constitution of this State and give a reasonable interpretation thereof to the county registrar. He shall

demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government.

The person applying to register shall make a sworn, written application for registration on a form to be prescribed by the state board of election commissioners, exhibiting therein the essential facts and qualifications necessary to show that he is entitled to register and vote, said application to be entirely written, dated and signed by the applicant in the presence of the county registrar, without [fol. 472] assistance or suggestion from any person or memorandum whatever; provided, however, that if the applicant is unable to write his application by reason of physical disability, the same, upon his oath of such disability, shall be written at his unassisted dictation by the county registrar.

Any new or additional qualifications herein imposed shall not be required of any person who was a duly registered and qualified elector of this state prior to January 1, 1952.

The Legislature shall have the power to enforce the provisions of this section by appropriate legislation.

Adopted by the House of Representatives, March 13, 1952.

Adopted by the Senate, April 10, 1952.

[fol. 473] APPENDIX III TO ANSWER

Senate Concurrent Resolution No. 13

A Concurrent Resolution to amend section 244 of the Constitution of 1890 of the State of Mississippi so as to more fully prescribe qualifications of electors.

Be it Resolved by the Senate, the House of Representatives concurring therein, That the following amendment to the Constitution of 1890 of the State of Mississippi, be submitted to the qualified electors of the state for ratification or rejection at an election to be held on the first Tuesday after the first Monday in November, A. D., 1954 viz:

Amend section 244 of the Constitution of 1890 of the State of Mississippi to read as follows:

Section 244. Every elector shall, in addition to the foregoing qualifications be able to read and write any section of

the Constitution of this State and give a reasonable interpretation thereof to the county registrar. He shall demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government.

The person applying to register shall make a sworn, written application for registration on a form to be prescribed by the state board of election commissioners, exhibiting therein the essential facts and qualifications necessary to show that he is entitled to register and vote, said application to be entirely written, dated and signed by the applicant in the presence of the county registrar, without assistance or suggestion from any person or memorandum [fol. 474] whatever; provided, however, that if the applicant is unable to write his application by reason of physical disability, the same, upon his oath of such disability, shall be written at his unassisted dictation by the county registrar.

Any new or additional qualifications herein imposed shall not be required of any person who was a duly registered and qualified elector of this state prior to January 1, 1954.

The Legislature shall have the power to enforce the provisions of this section by appropriate legislation.

Adopted by the Senate, March 29, 1954.

Adopted by the House of Representatives, April 22, 1954.

[fol. 475] APPENDIX IV TO ANSWER

House Concurrent Resolution No. 54

A Concurrent Resolution establishing the Mississippi Legal Educational Advisory Committee; to define its duties and authority, and to provide therefor such funds as are necessary to effectuate the purposes thereof.

Whereas, in order to preserve and promote the best interests of both races and the public welfare, it is necessary to maintain separate education and separate schools for the white and colored races; and,

Whereas, necessity for further legislation or constitutional amendments in that regard may hereafter raise:

It is Therefore Resolved by the House of Representatives of the State of Mississippi, the Senate concurring therein:

1. The Legal Educational Advisory Committee is hereby established.

2. Said committee shall formulate a plan or plans of legislation, prepare drafts of suggested laws, and recommend courses of action for consideration by the Legislature whereby the state may, by taxation or otherwise, provide education and/or assistance in obtaining education for all of its citizens consistent with the provisions of the Constitution of the United States and the Constitution of the State of Mississippi.

3. The committee shall be composed of the Governor, Lieutenant Governor, Speaker of the House of Representatives, Attorney General, Chief Justice of the Supreme Court, the State Superintendent of Education, the chairman of the Finance Committee of the Senate, chairman of the Judiciary Committee of the Senate, chairman of Senate [fol. 476] Education Committee, chairman of the Appropriations Committee of the House of Representatives, and, should he be unable to serve, the vice-chairman shall serve in his stead, the chairman of the Ways and Means Committee of the House of Representatives, the chairman of the Judiciary En Banc Committee of the House of Representatives, chairman of House Education Committee, one Senator to be appointed by the Lieutenant Governor, two members of the House of Representatives to be appointed by the Speaker, the President of the Mississippi State Bar Association, and two outstanding lawyers of the state, known for their ability as constitutional lawyers, do be appointed by the Governor, and six outstanding citizens to be appointed by the Governor, one from each Congressional District.

4. The Governor shall be chairman of the committee, and the said committee shall designate another member of the committee as vice-chairman to act in the absence of the chairman. Said committee shall perfect its organization conformable to the provisions of this resolution and may appoint subcommittees.

Thirteen (13) members of the committee shall constitute a quorum for the transaction of any business of the committee.

5. Said committee shall submit its findings and proposed plan of legislation with its accompanying draft of sug-

gested laws and/or amendments to the constitution, and its comments thereon, to any regular or extraordinary session [fol. 477] of this Legislature hereafter held.

6. Said committee is directed to cause its findings, proposed plan of legislation, accompanying drafts or suggested laws and/or constitutional amendments, and its comments thereon, to be printed and distributed to the members of the Legislative and to the press as early as is convenient prior to any extraordinary session of the Legislature which may be convened hereafter, and, if no such session is convened, then not less than ninety (90) days prior to the next regular session of the Legislature.

7. Said committee is directed to inquire into the educational structure of the state, and all pertinent provisions of the constitution and statutes of the state, as well as the Constitution and laws of the United States; to receive suggestions and statements from interested persons; and to make such other investigation and inquiry as will in its judgment assist in the discharge of the duties confided to it. Said committee is authorized from time to time to print and distribute reports of its findings and recommendations.

8. All departments and institutions of the state and of the subdivisions and municipalities of the state, including the state department of education and county educational organizations, are required to furnish information, aid and assistance to the committee upon its request, and cooperate with it in the discharge of its duties required under this [fol. 478] resolution.

The committee is authorized to employ such help, technical assistants and legal counsel to aid the committee in the performance of its duties as the committee may deem proper, and to fix their compensation.

9. The members of the committee, with the exception of the Governor, Attorney General, Chief Justice of the Supreme Court, and State Superintendent of Education, shall receive the same compensation and allowances for each day they are engaged in the performance of the duties of the committee as are received by members of the Legislature, for each day of an extraordinary session of the Legislature, plus any other compensation, per diem, allowance or reimbursement as is now provided by law for members of the Legislature when serving in extraordinary session. Pro-

vided, however, the Governor, Attorney General, Chief Justice of the Supreme Court and State Superintendent of Education shall receive their actual expenses incurred while engaged in the performance of the duties of the committee.

The expenses of the committee shall be paid out of the contingent funds of the House of Representatives and of the Senate, in such proportion as the committee may determine, upon warrants drawn on the respective contingent funds, signed by the chairman or vice-chairman of the committee and countersigned by the Clerk of the House of Representatives and Secretary of the Senate, as the case may be.

[fol. 478a] The duties and authority of said committee shall be filled by the same authority making the original appointment.

Adopted by the House of Representatives, April 7, 1954.
Adopted by the Senate, April 28, 1954.

[fol. 479] APPENDIX V TO ANSWER

House Concurrent Resolution No. 2

A Concurrent Resolution submitting an amendment to Article 8 of the constitution of the State of Mississippi, so as to add an additional section thereto, to be numbered "Section 213-B" authorizing the Legislature by two-thirds vote of those present and voting in each House to abolish public schools and authorize the counties and school districts to abolish public schools, sell and dispose of school buildings, lands and other property, and make appropriation of public property, and make appropriation of public funds, and do such other acts and things deemed necessary to aid and assist educable children of this state to secure an education.

Be it Resolved By the House of Representatives of the State of Mississippi, the Senate Concurring Therein:

Section 1. That there be and is hereby submitted to the qualified electors of the State of Mississippi for their approval or rejection, in an election to be held in accordance with section 273 of the constitution of this state, on Tuesday, the 21st day of December, 1954, the following amend-

ment to Article 8 of the Constitution of the State of Mississippi, to be numbered and inserted therein and added thereto as "Section 213-B" thereof, to-wit:

Section 213-B. (a) Regardless of any provision of Article 8, or any other provisions of this constitution to the contrary, the legislature may authorize the establishment, support, maintenance and operation of public schools.

(b) Regardless of any provision of Article 8, or any other provisions of this constitution to the contrary, the legislature shall be and is hereby authorized and empowered, by a two-thirds (2/3rds) vote of those present and voting in each House, to abolish the public schools in this [fol. 480] state, and enact suitable legislation to effect the same.

(c) Regardless of any provision of Article 8, or any other provisions of this constitution to the contrary, the legislature shall be and is hereby authorized and empowered, by a majority vote of those present and voting in each House, to authorize the counties and school districts to abolish their public schools, and enact suitable legislation to effect the same.

(d) In the event the legislature shall abolish, or authorize the abolition of the public schools in this state, then the legislature shall be and is hereby authorized and empowered to enact suitable legislation to dispose of school buildings, land and other school property by lease, sale or otherwise.

(e) The legislature may appropriate state funds and authorize counties, municipalities and other governmental subdivisions and districts to appropriate funds, including poll tax and sixteenth section funds, to aid educable children of this state to secure an education.

(f) The legislature may do any and all acts and things necessary for the purposes of this section, and this section is declared to be, and is, supplemental to all other provisions of this constitution, and legislation enacted under authority hereof shall prevail, whether in conflict with other sections or not.

Section 2. Said election for the submission of the aforesaid amendment shall be held in every election precinct of this state on said Tuesday, the 21st day of December, 1954. Notice of said election shall be given as required by the

[fol. 481] constitution and same shall be held agreeably to the general election laws of this state, and said amendment submitted therein in the same manner as amendments to the constitution are submitted in regular general elections held in this state.

Adopted by the House of Representatives, September 10, 1954.

Adopted by the Senate, September 16, 1954.

[fol. 482] APPENDIX VI-A TO ANSWER

House Bill No. 26

An Act to amend Section 3235, Mississippi Code of 1942, as amended, so as to provide who is entitled to vote, in compliance with Section 244 of the Constitution, as amended.

Be it enacted by the Legislature of the State of Mississippi:

Section 1. Section 3235, Mississippi Code of 1942, as amended, is amended to reas as follows:

3235. Who entitled to vote.—Every inhabitant of this state, except idiots, insane persons and Indians not taxed, who is a citizen of the United States, twenty-one (21) years old and upwards, who has resided in this State two (2) years and one year in the election district or city, town, or village in which he offers to vote, and who is able to read and write any section of the constitution of the state and who can give a reasonable interpretation thereof, and who can demonstrate a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government, and who shall have been duly registered as an elector by an officer of this state under the laws thereof, and who has never been convicted of bribery, burglary, theft, arson, obtaining money or goods under false pretenses, perjury, forgery, embezzlement, or bigamy, and who has paid all taxes which may have been legally required of him, and which he has had an opportunity to pay according to law, for the two (2) preceding years, and who shall produce to the officers holding the election satisfactory evidence that he has paid such taxes on or

[fol. 482-A] before the first day of February of the year in which he shall offer to vote, shall be a qualified elector in and for the election district or city, town, or village of his residence, and shall be entitled to vote at any election held not less than four (4) months after his registration; but any minister of the gospel, in charge of an organized church, or his wife legally residing with him, shall be entitled to vote after six (6) months' residence in the election district, city, town or village, if otherwise qualified. No others than those above included shall be entitled or shall be allowed, to vote at any election; provided, that a person unable to read or write by reason of physical disability shall, if otherwise qualified, nevertheless be entitled to vote and provided further that any new or additional qualifications herein imposed shall not be required of any person who was a duly registered and qualified elector of this state prior to January 1, 1954.

Section 2. This act shall take effect and be in force from and after its passage.

Approved March 24, 1955.

[fol. 483] APPENDIX VI-B TO ANSWER

Senate Bill No. 1216

An Act to amend Section 3213, Mississippi Code of 1942, to place into legal effect the Amendment to Section 244 of the Constitution of 1890, being Senate Concurrent Resolution No. 13 Regular Session of 1954.

Be it enacted by the Legislature of the State of Mississippi:

Section 1. That Section 3213, Mississippi Code of 1942, be, and the same is hereby amended so as to read as follows:

Section 3213. Person not to register unless he can read and write.—A person shall not be registered unless he be able to read and write any section of the constitution of this state and give a reasonable interpretation thereof to the county registrar. He shall demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government.

The person applying to register shall make a sworn, written application for registration on a form prescribed by the State board of election commissioners, exhibiting therein the essential facts and qualifications necessary to show that he is entitled to register and vote, said application to be entirely written, dated and signed by the applicant in the presence of the county registrar, without assistance or suggestion from any person or memorandum whatever; [fol. 484] provided, however, that if the applicant is unable to write his application by reason of physical disability, the same, upon his oath of such disability, shall be written at his unassisted dictation by the county registrar.

Provided, however, the provisions herein imposed shall not be required of any person who was a duly registered and qualified elector of this state prior to January 1, 1954.

Section 2. This act shall take effect and be in force from and after its passage.

Approved April 4, 1955.

[fol. 485] APPENDIX VII TO ANSWER

Senate Concurrent Resolution No. 147

A Concurrent Resolution to amend Article 12 of the Mississippi Constitution of 1890 so as to provide as an additional qualification to register for the purpose of becoming a qualified elector, a person shall be of good moral character, and to add same as section 241-A.

Be it Resolved by the Legislature of the State of Mississippi, two-thirds (2/3) of the Senate and House of Representatives concerning therein. That the following amendment to or change in Article 12 of the Mississippi Constitution of 1890 be submitted to the qualified electors of the State for ratification or rejection at an election to be held on the first Tuesday after the first Monday of November, 1960.

Amend or change Article 12 of the Constitution of the State of Mississippi of 1890 by adding thereto the following as Section 241-A thereof:

Section 241-A. In addition to all other qualifications required of a person to be entitled to register for the purpose of becoming a qualified elector, such person shall be of good moral character.

The Legislature shall have the power to enforce the provisions of this section by appropriate legislation.

Adopted by the Senate April 28, 1960.
Adopted by the House of Representatives May 5, 1960.

[fol. 486] APPENDIX VIII-A TO ANSWER

House Bill No. 899

An Act to amend Section 1, chapter 101, laws of Mississippi extraordinary session of 1955, being Section 3235, Mississippi Code of 1942, recompiled, as amended, so as to provide who is entitled to vote in compliance with Section 244 of the Constitution, as amended, and Section 241-A of the Constitution, requiring a person to be of good moral character to register, and clarifying what taxes must be paid in order to vote; and for related purposes.

Be it enacted by the Legislature of the State of Mississippi:

Section 1. That section 1, chapter 101, Laws of Mississippi, Extraordinary Session of 1955, being section 3235, Mississippi Code of 1942, Recompiled, as amended, be and the same is hereby amended to read as follows:

Section 1. Every inhabitant of this state, except idiots, insane persons and Indians not taxed, who is a citizen of the United States, twenty-one (21) years old and upwards, who has resided in this state two (2) years, and one year in the election district or city, town or village in which he offers to vote, and who is able to read and write any section of the Constitution of the state and who can give a reasonable interpretation thereof, and who can demonstrate a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government, and who shall have been duly registered as an elector by an officer of this state under the laws thereof, and who has never been convicted of bribery, burglary, theft, arson, obtaining money or goods under false pretenses, perjury, [fol. 487] forgery, embezzlement, or bigamy, and who has paid all poll taxes which may have been legally required of him, and which he has had an opportunity to pay according to law, for the two (2) preceding years, and who shall

produce to the officers holding the election satisfactory evidence that he has paid such poll taxes on or before the first day of February of the year in which he shall offer to vote, shall be a qualified elector in and for the election district or city, town or village of his residence, and shall be entitled to vote at any election held not less than four (4) months after his registration; but any minister of the gospel, in charge of an organized church, or his wife legally residing with him, shall be entitled to vote after six (6) months' residence in the election district, city, town, or village, if otherwise qualified. No others than those above included shall be entitled, or shall be allowed, to vote at any election; provided, that a person unable to read or write by reason of physical disability shall, if otherwise qualified, nevertheless be entitled to vote, and provided further that any new or additional qualifications herein imposed shall not be required of any person who was a duly registered and qualified elector of this state prior to January 1, 1954; except that any person registering after the effective date of this act shall be of good moral character as required by Section 241-A of the Mississippi Constitution.

Section 2. This act shall take effect and be in force from and after its passage.

Approved May 26, 1962.

[fol. 488] APPENDIX VIII-B TO ANSWER

House Bill No. 905

An Act to amend section 1, chapter 449, laws of 1960; and to amend section 1, chapter 99, and section 5, chapter 102, laws of the extraordinary session of 1955, so as to include therein and enforce the requirement of section 241-A of the Mississippi Constitution that anyone registering to vote shall be of good moral character; and for related purposes.

Be it enacted by the Legislature of the State of Mississippi:

Section 1. Section 1, chapter 449, laws of 1960, is hereby amended to read as follows:

Section 1. The state board of election commissioners shall, as soon as practicable and thereafter at such times

as it may deem advisable, consistent with the Constitution, prepare a series of application blanks, including the oath of the person offering to register, in compliance with Section 242 of the Constitution of this state, and including blank forms for furnishing of information, showing date of application, which shall be the date of registration if such applicant be approved for registration; name of applicant; age; occupation; where business carried on; if employed, by whom; place of residence; date such residence began; previous place of residence; what oath applicant takes; if more than one person of the same name in precinct, by what name applicant wishes to be called; whether applicant has been convicted, and if so, when and where, of any of the crimes referred to in Section 241 of the Constitution of [fol. 489] Mississippi, which are bribery, theft, arson, obtaining money under false pretenses, perjury, forgery, embezzlement and bigamy, and the moral character of applicant; all designed to test the ability of applicants for registration to vote to read and write any section of the Constitution of this state and give a reasonable interpretation thereof, and demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government; and to demonstrate to the county required by Section 241-A of the Constitution of Mississippi. Such applications shall be designed to exhibit the essential facts and qualifications necessary to show that such person is entitled to register and vote. Copies of such application blank forms shall be delivered to the county registrar of each county, and such copies shall be supplied to each county registrar as needed. The oath required by Section 242 of the Constitution shall be administered by the registrar. The board of supervisors is authorized to make proper allowances for office supplies reasonably necessary by this act.

If no appeal has been or is taken as provided by law from the ruling of the registrar upon any application for registration, or if any application for registration is abandoned or waived by the applicant therein by making another application for registration before any final judgment or decision has been rendered on any prior application, or other-[fol. 490] wise waived or abandoned same, the registrar is not required to retain or preserve any record made under the provisions hereof.

Section 2. Section 1, chapter 99, laws of the extraordinary session of 1955, is hereby amended to read as follows:

Section 1. Registrar to register voters. The registrar shall register on the registration books of the election district of the residence of such person anyone appearing before him, and being, upon examination found, in compliance with Section 244 of the Constitution, as amended, and in compliance with Section 241-A of the Constitution of Mississippi to be entitled to be registered as an elector, upon such person taking and subscribing the oath required by Section 242 of the Constitution of Mississippi; but persons who may be entitled to register under the provisions of Section 251 of the Constitution of Mississippi, who would be otherwise disqualified by reason of age, may take the oath as modified by that circumstances, and the subscription of the oath shall be by the elector writing his name in the proper column in the registration book.

Section 3. That section 5, chapter 102, laws of the extraordinary session of 1955, is hereby amended to read as follows:

Section 5. Form of registration books. The registration books are to be in the following form: They shall have printed at the top of the pages the oath prescribed by Section 242 of the Constitution of Mississippi, and beneath shall be ruled appropriate columns, the headings of which [fol. 491] shall be printed respectively, as follows, viz: date of registration; names of electors; age; occupation; where business carried on; if employed, by whom; place of residence in the district; what oath does elector take? If more than one person of same name in district, by what appellation does elector wish to be called? Has the elector met all of the requirements of Section 244 of the Constitution of Mississippi, as amended? Has the elector met all of the requirements of Section 241-A of the Constitution of Mississippi? Signature of elector; remarks.

In the column headed "What oath does elector take?" the registrar shall write the word "general," if the elector take the general oath prescribed, the word "minister's," or "minister's wife," if he or she take the oath as modified by the parenthetical sentence thereon; and the words "special as to age," if the elector will, as provided in Section 251 of the

Constitution of Mississippi, become of age before the election next after he proposed to register; and in the column headed, "Has the elector met, etc.?" if he has met all the requirements of Section 244 of the Constitution, as amended, and Section 241-A of the Constitution of Mississippi, the word "yes" shall be entered.

And provided further, that when a new registration is ordered in a county that new registration books shall be purchased to comply with the form prescribed herein. And provided further, that persons registering in any such new [fol. 492] registration books who were duly registered and qualified electors of this state prior to January 1, 1954, shall be entitled to register in such new registration books in accordance with the requirements of law in existence on said date; except that all persons registering after the effective date of this act shall be of good moral character as required by Section 241-A of the Constitution of Mississippi.

Section 4. Should any provision or section of this act be held to be unconstitutional or otherwise invalid for any reason, such holding shall not be construed to affect the validity of any other part or portion of this act.

Section 5. That this act shall take effect and be in force from and after its passage.

Approved May 26, 1962.

[fol. 493] APPENDIX VIII-C TO ANSWER

House Bill No. 822

An Act to require publication of the name and address of all applicants for registration to vote; and for related purposes.

Be it enacted by the Legislature of the State of Mississippi:

Section 1. Within ten (1) days after the receipt by the registrar of any application to register to vote and before consideration is given to the sufficiency of the application, the registrar shall deliver for publication in a newspaper hereinafter described the name and address of such applicant as stated in said application and shall cause same to be published once each week for two (2) consecutive weeks

in a newspaper having general circulation in the county where such applicant has applied to register, but if no such newspaper is published in such county, then publication shall be made in some newspaper published in an adjoining or other county but of general circulation in the county of the residence of the applicant.

Section 2. The said name and address shall be published in said newspaper under a heading entitled: "Applicants for registration to vote." When said publication shall have been completed, proper proof of publication shall be furnished to the registrar and same shall be preserved as a record of his office. The cost of the publication and proof thereof shall be paid by the county out of its general fund at the rate for legal notices.

[fol. 494] Section 3. If within fourteen (14) days, exclusive of the date of the last publication of the name or names aforesaid, after the date of the last publication, no qualified elector of the county, other than the registrar, shall have challenged, in the manner prescribed by law, the good moral character of applicant and any other requirement which applicant must meet in order to be qualified to register to vote, the registrar shall within a reasonable time, under the circumstances, determine whether applicant has complied with the Constitution and laws of the State of Mississippi to entitle him to register to vote.

Section 4. If any part or portion of this act is held unconstitutional or invalid, such shall not affect any remaining part or portion hereof.

Section 5. This act shall take effect and be in force from and after its passage.

Approved May 26, 1962.

[fol. 495] APPENDIX VIII-D TO ANSWER

House Bill No. 904

An Act to provide a method for third persons by affidavit to challenge the good moral character of any applicant to register to vote and the sufficiency of any application to register to vote; who may challenge; to provide a hearing on any such challenge and appeal therefrom; and to enforce the requirements of a person to register to vote; and for related purposes.

Be it enacted by the Legislature of the State of Mississippi:

Section 1. The sufficiency and the truthfulness of the statements made in the application to register to vote, and the contents thereof, and the good moral character of an applicant to register to vote are material, and this act is adopted to further enforce the requirements to register to vote as set out in the Constitution and laws of the State of Mississippi.

Section 2. Any qualified elector of the county may challenge the good moral character of any applicant and any other requirement of any applicant to vote within fourteen (14) days after the date of the last publication of the name and address of such applicant by filing with the registrar an affidavit in duplicate setting forth facts upon which the challenge is based. Upon the filing of any such challenge the registrar shall within seven (7) days thereafter, esclusive of the date of the filing of such challenge, send to applicant by certified mail, addressed to him at the address shown on the application, one copy of such affidavit, and [fol. 496] notice of the date, time and place where the registrar will hold an administrative hearing to determine the sufficiency of the application or challenge.

Section 3. The registrar, who is an administrative officer of the county in which he serves as registrar, is hereby vested with full power and authority to hold and conduct such administrative hearing and render his decision thereon; he may render his decision at the completion of the hearing or may take the matter under advisement just as a court may do.

Section 4. Such hearing shall be held in the office of the registrar or at some other place designated by the registrar in the county courthouse, and shall be set within a reasonable time after the date of the mailing of said notice. If there be two (2) judicial districts in the county, then the hearing shall be had in the courthouse of the judicial district in which the application to register is made. On his own motion or for good cause shown, the registrar may change the date and time of such hearing. At such hearing by the registrar he may hear oral and documentary evidence in support of, in challenge of, or denial of, the suffi-

ciency of the application, the good moral character of the applicant, and as to any other requirement which applicant must meet in order to be qualified to register to vote.

Section 5. The registrar may issue subpoenas to be served by the Sheriff of the county to secure their attend- [fol. 497] ance as witnesses and the production of documents at such hearing. Obedience to any such subpoena may be secured by the registrar by filing with the Circuit Judge, in term time or in vacation, a petition seeking enforcement, and the person subpoenaed shall obey the order of the Circuit judge made therein.

The Circuit Judge, in vacation or in term time, is hereby vested with jurisdiction to hear and determine such petition, make proper orders thereon and issue appropriate process, and said petition shall be heard at such time and place as he may specify on five (5) days' notice to all parties.

Section 6. The registrar shall administer to the witnesses who testify in said administrative hearing the same oath as is used in the trial of cases in the Circuit Court.

Section 7. The registrar shall require all testimony taken before him to be taken down by a competent stenographer or reporter, and a transcript thereof shall be filed with and retained by the registrar as a record of his office. All costs of such proceedings may be taxed by the registrar in accord with the manner and practice pertaining to costs in the Chancery Court under the laws of this State.

8. If the decision of the registrar be that the applicant is qualified to register under the Constitution and laws of the State of Mississippi, he shall be forthwith registered; but if the registrar finds that applicant is not qualified under said Constitution and laws to be registered, he shall [fol. 498] not register the applicant but shall mark his application "failed"; but if he finds that applicant is not of good moral character he shall so endorse the application and state the facts upon which the finding of lack of good moral character is based.

Section 9. At such hearing held by the registrar, applicant and any person or persons challenging the truthfulness or sufficiency of the application may be represented by counsel, but applicant and any challenger may appear

pro se in and on his own behalf if they choose. Witnesses may be examined or cross-examined as in trials in the Circuit Court.

Section 10. An appeal may be taken to the Board of County Election Commissioners by any persons against whom the registrar may decide within the same time and in the same manner as is now provided for an appeal from registration or denial of registration by the registrar.

Section 11. If the applicant or any challenger does not appear at the time and place set by the registrar for the hearing of any challenge, the registrar may, in his discretion, reset the hearing or may proceed and determine whether applicant is or is not, as the case may be, qualified under the Constitution and laws of the State of Mississippi to register to vote.

The person or persons against whom the registrar decides may appeal as above provided just as if a hearing had been held.

[fol. 499] Section 12. Strict rules of evidence shall not be enforced at the hearing herein provided for. Witnesses may be examined by the applicant or his attorneys, and by the challenger or challengers or their attorneys.

Section 13. The provisions of this act are intended to provide an additional administrative method whereby third parties may challenge the sufficiency of any application to register and the good moral character of an applicant, and are not intended to affect the right, duty and authority of the registrar to determine such qualifications, as now provided by law, if no challenge is made by any third party.

Section 14. If any part or portion of this act shall be declared invalid or unconstitutional by any court, same shall not affect the validity of any other section, clause, phrase or word hereof.

Section 15. This act shall take effect and be in force from and after its passage.

Approved May 26, 1962.

[fol. 500] APPENDIX IX TO ANSWER

Good Moral Character Requirements in State Constitutions and in Federal and State Statutes

1. Thirty-seven states and the District of Columbia require good moral character as a prerequisite for licensing or registration as an architect.

2. Thirty-four states require good moral character as a prerequisite for licensing or registration as an attorney.

3. Thirty-six states and the District of Columbia require good moral character as a qualification for licensing as a barber or apprentice barber.

4. Twenty-seven states and the District of Columbia require good moral character as a prerequisite for licensing or registration of professional engineers, engineers-in-training or land surveyors.

5. Thirty-seven states and the District of Columbia require good moral character as a prerequisite to obtaining a license to practice medicine and surgery.

6. Thirty-nine states require good moral character as a prerequisite to the licensing or registration of funeral directors, undertakers, embalmers or apprentice embalmers.

7. Thirty-seven states and the District of Columbia require good moral character as a prerequisite to the licensing or registration of pharmacists.

8. Thirty-five states require good moral character as a prerequisite for the licensing or registration of real estate [fol. 501] brokers or real estate salesmen.

9. Twenty-eight states and the District of Columbia require good moral character as a prerequisite for the licensing or registration of those desiring to practice veterinary medicine, veterinary dentistry or veterinary surgery.

10. Thirty-one states and the District of Columbia require good moral character as a prerequisite to the licensing or registration of certified public accountants, public accountants, or accountants.

11. Five states require good moral character as a prerequisite for becoming a qualified voter or elector.

12. Under Federal Law regarding deportable aliens found in Volume 8 U.S.C.A., Sections 1-1280, there are sections having to do with the eligibility of aliens for sus-

pension of deportation. Each category requires good moral character in order to apply suspension of deportation. In addition, the statutes provide that no person may become a naturalized citizen of the United States who is not a person of good moral character.

13. Good moral character is a requirement for admission to practice before the following Courts by the United States:

(a) Supreme Court of the United States
(b) Court of Claims of United States
(c) United States Customs Court
(d) United States Circuit Court of Appeals for the First Circuit
[fol. 502] (e) United States Court of Appeals for the Second Circuit
(f) United States Court of Appeals for the Third Circuit
(g) United States Court of Appeals for the Fourth Circuit
(h) United States Circuit Court of Appeals for the Sixth Circuit
(i) United States Circuit Court of Appeals for the Seventh Circuit
(j) United States Circuit Court of Appeals for the Eighth Circuit
(k) United States Circuit Court of Appeals for the Ninth Circuit

14. The Mississippi Code of 1942 Annotated specifically requires "good moral character" for licensing to practice for the following professions or callings:

(a) Taxicab operator
(b) Incorporators of banks
(c) Bank examiners
(d) Architects
(e) Attorneys
(f) Barbers
(g) Dentist
(h) Embalmers
(i) Nurses

(j) Optometrists
(k) Pharmacists
(l) Physicians
(m) Podiatry
(n) Accountants
(o) Veterinarians

[fol. 503] 15. Section 8920-05 of the Mississippi Code of 1942 Annotated relative to licensing of real estate brokers requires that a person bear a "good reputation for honesty and trustworthiness and a recommendation that the prospective licensee be of such."

16. The State of Georgia requires as a prerequisite to registration and voting that a person be eighteen years of age, not convicted of various moral turpitude offenses and a literacy test and that a person be able to correctly read and properly write the English language any paragraph of the United States Constitution or the Constitution of Georgia or be of "good character" and understand the obligations of citizenship.

17. The States of Alabama and Louisiana each have constitutional provisions which require "good character" as a prerequisite to registration.

[fol. 504] APPENDIX X-A TO ANSWER

House Concurrent Resolution No. 36

A Concurrent Resolution commending United States Senator James O. Eastland, United States Senator John C. Stennis, and other Southern Senators on the tremendous fight they are waging at this time against the vicious Civil Rights proposals now under "Around the Clock" debate on the floor of the United States Senate.

Whereas, Senior Senator James O. Eastland and Junior Senator John C. Stennis are now engaged in "Around the Clock" debate on the vicious so-called Civil Rights Bills; and

Whereas, Senator Eastland and Senator Stennis, by virtue of their seniority, integrity, and high moral standars have been chosen by their colleagues as leaders in this bitter battle; and

Whereas, these two gentlemen, representing approximately two and one half million Americans, are expressing the sentiment of all our people in using every honorable means and taking advantage of every rule for protection of the minority that can be found in the Rules of Procedure of the United States Senate; and

Whereas, our people are vitally concerned over these pending bills as we believe with the passage of such legislation it is just another step toward a police state, regimentation, and the further strengthening of federal control with the ultimate objective of destroying the right of the states and local self government: Now, Therefore,

[fol. 505] Be it Resolved by the House of Representatives, the Senate concurring therein, That Senator Eastland and Senator Stennis be highly commended, along with Senator Russell of Georgia and others who have joined in this battle to preserve the American way of life on which this country was founded and of which all the states of this nation have prospered.

Be it Further Resolved, That these Senators above mentioned be notified by this resolution that we are hoping and praying for success in their determined fight, and that we are on record as realizing not only their person sacrifice but also the tremendous physical and mental strain these Senators are under and that the people of Mississippi, the South and the many fair-minded people of this great Nation owe these gentlemen a great debt of gratitude, and on this memorable fight they are waging, the most important and determined battle on the floor of the United States Senate in one hundred years or more, go our prayers, and God bless you.

Be it Further Resolved, That a copy of this Resolution be forwarded to Senator Eastland, Senator Stennis and Senator Richard Russell of Georgia and to members of the press.

Adopted by the House of Representatives March 2, 1960.
Adopted by the Senate March 3, 1960.

[fol. 506] APPENDIX X-B TO ANSWER

Senate Bill No. 1883

An Act to amend section 1 of chapter 102 of the laws of the legislature of the State of Mississippi, 1955 extraordinary session, so as to eliminate any requirement that the application forms be numbered or indexed or be public records or be preserved; and to amend section 2 of said chapter 102 so as to eliminate certain requirements of preserving certain records; and for related purposes.

Be it enacted by the Legislature of the State of Mississippi.

Section 1. Section 1, Chapter 102, Laws of the Extraordinary Session of 1955, shall be amended to read as follows:

Section 1. The State Board of Election Commissioners shall, as soon as practicable and thereafter at such times as it may deem advisable, consistently with the Constitution, prepare a series of application blanks, including the oath of the person offering to register, in compliance with Section 242 of the Constitution of this State, and including blank forms for furnishing of information, showing date of application, which shall be the date of registration if such applicant be approved for registration; name of applicant; age; occupation; where business carried on; if employed, by whom; place of residence; date such residence began; previous place of residence; what oath applicant takes; if more than one person of same name in precinct, by what name applicant wishes to be called; whether applicant has been convicted, and if so, when and where, of any of the crimes [fol. 507] referred to in Section 241 of the Constitution of Mississippi, which are bribery, theft, arson, obtaining money under false pretenses, perjury, forgery, embezzlement or bigamy; all designed to test the ability of applicants for registration to vote to read and write any section of the Constitution of this State and give a reasonable interpretation thereof, and demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government. Such applications shall be designed to exhibit the essential facts and qualifications necessary to

show that such person is entitled to register and vote. Copies of such application blank forms shall be delivered to the county registrar of each county, and such copies shall be supplied to each county registrar as needed. The oath required by Section 242 of the Constitution shall be administered by the registrar. The board of supervisors is authorized to make proper allowances for office supplies reasonably necessary by this Act.

If no appeal has been or is taken as provided by law from the ruling of the registrar upon any application for registration, or if any application for registration is abandoned or waived by the applicant therein by making another application for registration before any final judgment or decision has been rendered on any prior application, or otherwise waived or abandoned same, the registrar is not required to retain or preserve any record made under the provisions hereof.

[fol. 508] Section 2. Section 2, Chapter 102, Laws of the Extraordinary Session of 1955, shall be amended to read as follows:

Section 2. The county registrar shall examine each applicant for registration by having such person write, date and sign an application as prepared by the State Board of Election Commissioners, in the presence of the county registrar, without assistance or suggestion from any person or memorandum whatever; provided that in case an applicant be physically disable to read and write, or read or write, his application, the same shall, upon oath of such disability, be written at his unassisted dictation by the county registrar. Affidavit showing such disability and the nature thereof shall be filed with the county registrar. In addition to the aforesaid written examination, the county registrar shall determine the applicant's qualifications to register by propounding of suitable questions to be answered under oath by the applicant.

If no appeal has been or is taken as provided by law from the ruling of the registrar upon any application for registration, or if any application for registration is abandoned or waived by the applicant therein by making another application for registration before any final judgment or decision has been rendered on any prior application, or otherwise waived or abandoned same, the registrar is not

required to retain or preserve any record made under the provisions hereof.

Section 3. This Act shall take effect and be in force from and after its passage.

Approved April 15, 1960.

[fol. 509] APPENDIX XI-A TO ANSWER

House Bill No. 900

An Act to amend section 1, chapter 104, laws of 1955 extraordinary session, declaring and clarifying the original intent thereof and providing that the requirements thereof were and are mandatory, and no application shall be approved unless the requirements thereof are complied with; and to insert the requirement of section 241-A of the constitution of Mississippi that no person shall be registered unless he be of good moral character.

Be it enacted by the Legislature of the State of Mississippi:

Section 1. Section 1, chapter 104, laws of 1955 extraordinary session, is amended to read as follows:

Section 1. Person not to register unless he can read and write. A person shall not be registered unless he be able to read and write any section of the constitution of this state and give a reasonable interpretation thereof to the county registrar. He shall demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government; he shall also demonstrate to the county registrar that he is a person of good moral character.

The person applying to register shall make a sworn, written application for registration on a form prescribed by the state board of election commissioners, exhibiting therein the essential facts and qualifications necessary to show that he is entitled to register and vote, said application to be entirely written, dated and signed by the applicant in the presence of the county registrar, without assistance or suggestion from any person or memorandum whatever; provided, however, that if the applicant is unable to write [fol. 510] his application by reason of physical disability,

the same, upon his oath of such disability, shall be written at his unassisted dictation by the county registrar. As originally enacted each provision is and it is further declared to be mandatory and not directory; no application should have been mandatory and not directory; no application should have been and shall not be approved or the applicant declared qualified to register to vote unless all blank spaces in the application and the oath are properly and responsively filled out by the applicant; and the oath, as such, shall be signed by the applicant; and the application, as such, shall be signed separately by the applicant at the places thereon provided for applicant's signature.

Provided, however, the provisions herein imposed shall not be required of any person who was a duly registered and qualified elector of this state prior to January 1, 1954; except that from and after the effective date of this act no person shall be permitted to register unless he demonstrates to the county registrar that he is of good moral character as required by the provisions of Section 241-A of the Constitution of Mississippi.

Section 2. Should any provision of this act be held to be unconstitutional or otherwise invalid for any reason, such holding shall not be construed to affect the validity of any other part or portion of this act.

[fol. 511] Section 3. That this act shall take effect and be in force from and after its passage.

Approved May 23, 1962.

[fol. 512] APPENDIX XI-B TO ANSWER

House Bill No. 901

An Act to amend section 3232, Mississippi Code of 1942, Recompiled, so as to eliminate from the poll book the color of the electors appearing thereon.

Be it enacted by the Legislature of the State of Mississippi:

Section 1. That Section 3232, Mississippi Code of 1942, Recompiled, be and the same is hereby amended to read as follows:

3232. Form of poll book. The poll book of each election district shall have printed or written at the top of each page

words to designate the election district for which it is to be used, and shall be ruled in appropriate columns, with printed or written headings, as follows: Date of registration; name of electors; age; and a number of blank columns for the dates of elections. All who register within four months before any regular election shall be entered on the poll books immediately after such election, and not before, so that the poll books will show only the names of those qualified to vote at such election. When election commissioners determine that any elector is disqualified from voting, by reason of being delinquent for poll tax, removal from the precinct, or other cause, that fact shall be noted on the registration book and his name shall be erased from the poll book. After disqualification for delinquency has been removed in subsequent years, the name of such elector shall be reinstated on the poll book without re-regis-
[fol. 513] tration, and that fact shall be noted in the registration book.

Section 2. This act shall take effect and be in force from and after its passage.

Approved May 23, 1962.

[fol. 514] APPENDIX XI-C TO ANSWER

House Bill No. 903

An Act providing what shall be endoresed upon the applications to register which have been passed upon by the registrar; and for related purposes.

Be it enacted by the Legislature of the State of Mississippi:

Section 1. When the registrar shall have determined that an applicant to register to vote has qualified to register under the Constitution and laws of the State of Mississippi, he shall endorse upon the application the word "passed," or a word or words of equivalent meaning, and the applicant shall be entitled to register upon his request for registration made in person to the registrar, or deputy registrar, if a deputy registrar has been appointed. As is now required by law, no person other than the registrar or a deputy registrar shall register any applicant. It shall be

the responsibility of an applicant for registration to make inquiry of the registrar, or the deputy registrar, if a deputy registrar has been appointed, to determine whether such applicant has passed and is qualified to register.

Section 2. If applicant be of good moral character, but has not otherwise complied with the Constitution and laws of this state to entitle him to vote, then the registrar shall endorse upon the application the word "failed," without specifying the reason or reasons therefor, as so to do may [fol. 515] constitute assistance to the applicant on another application.

Section 3. If applicant is otherwise qualified to register, but fails to demonstrate to the registrar that applicant is of good moral character and the registrar so finds, the registrar shall endorse upon the application the words "not of good moral character," and shall state the facts or reasons why he finds applicant not to be of good moral character.

Section 4. If applicant is not otherwise qualified under said Constitution and laws and fails to demonstrate that he is of good moral character, then the registrar shall endorse upon the application the word "failed," and may endorse thereon the words "not of good moral character," but if he endorses the latter on the application he shall state the facts and reasons why he finds applicant not to be of good moral character.

Section 5. If any part or portion of this act is held unconstitutional or invalid, such shall not affect any remaining part or portion hereof.

Section 6. This act shall take effect and be in force from and after its passage.

Approved May 23, 1962.

[fol. 516] [File Endorsement Omitted]

IN THE UNITED STATES DISTRICT COURT FOR SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3312

ANSWER OF DEFENDANT, MRS. MARTHA TURNER LAMB, CIRCUIT CLERK AND REGISTRAR OF LEFLORE COUNTY—Filed May 13, 1963

First Defense

The Complaint fails to state a claim against this Defendant upon which relief can be granted.

Second Defense

This Court as composed lacks jurisdiction over the subject matter of this action and over this Defendant.

Answer to First Claim

1. This Defendant denies that this Court has jurisdiction of this action.

2. This Defendant admits that the State of Mississippi is joined as a Defendant but denies that the State is properly joined as a Defendant, and in addition says that Sec-
[fol. 517] tion 601 (b) of the Civil Rights Act of 1960 is unconstitutional.

3. This Defendant denies that the Mississippi State Board of Election Commissioners is an agency of the State of Mississippi, and admits the other allegations of Paragraph 3 of the Complaint.

4. This Defendant admits the averments of Paragraph 4 of the Complaint.

5. This Defendant admits the averments of Paragraph 5 of the Complaint.

6. This Defendant admits the averments of Paragraph 6 of the Complaint.

7. This Defendant admits the averments of Paragraph 7 of the Complaint.

8. This Defendant admits the averments of Paragraph 8 of the Complaint.

9. This Defendant admits the averments of Paragraph 9 of the Complaint.

10. This Defendant denies that registrars of voters in Mississippi, including this Defendant registrar, are agents of the Mississippi State Board of Election Commissioners and of the State of Mississippi; and denies that said registrars administer and enforce the Mississippi constitutional and statutory provisions which set out the requirements and procedures for the registration of voters. The said registrars are appointees, but not agents, of the Mississippi State Board of Election Commissioners. They perform [fol. 518] only those duties imposed upon them by the statutes of Mississippi.

11. This Defendant denies that all registrars of voters in the State of Mississippi since at least 1892 have been white citizens.

12. This Defendant denies the allegations of Paragraph 12 of the Complaint with reference to the voting age population and number of registrants in Leflore County. The number of registrants in said county is not accurately stated for the reason among others that Plaintiff has not excluded therefrom the large numbers of registrants who died and moved out of the county after registering. The "voting age population" alleged by Plaintiff has no significance for the reason among others that Plaintiff has not excluded therefrom the number of those whites and negroes twenty-one years and upwards who have not resided in Mississippi for two years and one year in the election district, or in the incorporated city or town in which he offers to vote. For answer to the remaining averments of Paragraph 12 of the Complaint, this Defendant hereby adopts the answers of the other Defendant registrars to the averments of Paragraph 12 of the Complaint as her answer thereto.

13. This Defendant denies the averments of Paragraph 13 of the Complaint.

14. This Defendant denies the averments of Paragraph 14 of the Complaint. Under the Constitution of the State of Mississippi prior to 1890, no inhabitant of this state who had not been duly registered according to the require- [fol. 519] ments thereof was a qualified elector.

15. This Defendant denies the averments of Paragraph 15 of the Complaint.

16. This Defendant denies the averments of Paragraph 16 of the Complaint except the averment that in 1890 a Mississippi Constitutional Convention adopted a new State Constitution.

17. This Defendant denies the allegations of Paragraph 17 of the Complaint except this Defendant admits the existence of Section 244 of the Mississippi Constitution of 1890 and assents that said section is itself the best evidence of its content. It is obvious from the content of saidSection 244 that its purpose was the laudable one of upgrading the electorate of Mississippi by requiring every elector regardless of his or her race, color, or previous condition of servitude, to be able to read any section of the Constitution of the State of Mississippi, or able to understand the same when read to him, or able to give a reasonable interpretation thereof.

18. Registration has been a prerequisite for voting since the adoption of the 1869 Constitution of the State of Mississippi. This Defendant denies that registration in Mississippi is permanent. New registrations are authorized by statute whenever the conditions specified in the statute exist.

19. This Defendant denies the allegations of Paragraph 19 of the Complaint.

20. This Defendant is without knowledge or information [fol. 520] sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 of the Complaint. As is true of so many other allegations in the Complaint, this Defendant is unable to see the materiality of the number of registrants in 1899 or to understand why the Plaintiff selected that particular year.

21. This Defendant denies the averments of Paragraph 21 of the Complaint.

22. This Defendant denies the allegations of Paragraph 22 of the Complaint except this Defendant admits the United States Court of Appeals for the Fifth Circuit in Peay v. Cox, 190 F. 2d 123, as dicta, mentioned the "either-or elements of Section 244." The rationale of this case was that Mississippi has provided, for those who claim that they have been illegally denied registration by a registrar, an administrative remedy which is simple, cheap and effective, and that an aggrieved applicant for registration in Missis-

sippi must exhaust this remedy before seeking an injunction to control a registrar in the performance of his duties.

23. This Defendant admits that in 1951 a higher percentage of negroes of voting age were literate than in 1890.

24. In 1952 a proposed amendment to Section 244 of The Constitution of the State of Mississippi, such as is described [fol. 521] in Paragraph 24 of the Complaint, was passed by a two-thirds vote of each house of the legislature, and was thereafter submitted to the voters in a general election. It failed because a majority of the qualified electors voting in the election did not vote for the proposed amendment. The joint resolution mentioned in the complaint is the best evidence of its content.

25. This Defendant denies the allegation that the legislature of Mississippi did not meet in 1953. This Defendant admits that in 1954 the Mississippi Legislature proposed to amend Section 244 of the Constitution of 1890 of the State of Mississippi so as to cause it to read as follows:

> "Section 244. Every elector shall, in addition to the foregoing qualifications be able to read and write any section of the Constitution of this State and give a reasonable interpretation thereof to the county registrar. He shall demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government.
>
> "The person applying to register shall make a sworn, written application for registration on a form to be prescribed by the state board of election commis- [fol. 522] sioners, exhibiting therein the essential facts and qualifications necessary to show that he is entitled to register and vote, said application to be entirely written, dated and signed by the applicant in the presence of the county registrar, without assistance or suggestion from any person or memorandum whatever; provided, however, that if the applicant is unable to write his application by reason of physical disability, the same, upon his oath of such disability, shall be written at his unassisted dictation by the county registrar.
>
> "Any new or additional qualifications herein imposed shall not be required of any person who was a

duly registered and qualified elector of this state prior to January 1, 1954.

"The Legislature shall have the power to enforce the provisions of this section by appropriate legislation."

26. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 26 of the Complaint.

27. This Defendant denies the averments of Paragraph 27 of the Complaint. The proposed amendment to Section 244 of the Constitution of 1890 of the State of Mississippi plainly and clearly requires every qualified elector, regardless of his or her race, color, or previous condition of servi- [fol. 523] tude, to be able to read and write any section of the Constitution of this state and to give a reasonable interpretation thereof. Its provisions apply to whites and negroes alike. If anyone is disqualified by reason thereof, his or her disqualification stems from his or her inability to read and write any section of the Constitution of this state and to give a reasonable interpretation thereof, not from his or her race, color, or previous condition of servitude.

28. This Defendant denies the allegations of Paragraph 28 of the Complaint except this Defendant admits that during the regular 1954 session of the Mississippi Legislature, a concurrent resolution was adopted by the House of Representatives, April 7, 1954, and by the Senate, April 28, 1954, whereby The Legal Educational Advisory Committee was established and charged as follows:

"Said Committee shall formulate a plan or plans of legislation, prepare drafts of suggested laws, and recommend courses of action for consideration by the legislature whereby the state may, by taxation or otherwise, provide education and/or assistance in obtaining education for all of its citizens *consistent with the provisions of the Constitution of the United States* and the Constitution of the State of Mississippi."

[fol. 524] 29. This Defendant denies the allegations of Paragraph 29 of the Complaint including the allegation that in 1954 the Supreme Court declared that state operation of racially segregated schools was unconstitutional.

30. This Defendant one allegation of Paragraph 30 except that Defendant admits that in September, 1954, the Mississippi Legislature by the adoption of Chapter 391 General Laws of Mississippi, Extraordinary Session of 1954, submitted to the qualified electors of Mississippi for their approval or rejection an amendment to the Constitution of the State of Mississippi, recommended by The Legal Education Advisory Committee. This Defendant says that said Chapter 39 is the best evidence of its contents.

31. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments that on November 2, 1954, there were approximately 472,000 registered voters in Mississippi qualified to vote on the proposed amendment to Section 244 of the Constitution of 1890 of the State of Mississippi, and that of that number about ninety-five percent were white and fewer than five percent were negro, but if thos averments be true the disparity in the voting strength of the whites and negroes was not due to their race, color or previous condition of servitude, but in large part to the apathy and indifference of the negroes toward their responsibilities of citizenship. This Defendant denies that public educational facilities provided for negroes were and are inferior to those provided for white persons.

[fol. 525] 32. On December 21, 1954, a proposed amendment to Article 8 of The Constitution of the State of Mississippi, to be numbered Section 213-B, was adopted at the election held to consider the same. The amendment is the best evidence of its contents.

33. This Defendant admits the allegations of Paragraph 33 of the Complaint but states that the legislature was called in session for purposes in addition to the one alleged in the Complaint, such otherpurposes being those set forth in the proclamation of Hugh White, Governor, dated December 29, 1954.

34. This Defendant denies the allegations of Paragraph 34 of the Complaint except this Defendant admits the adoption of chapters 102 and 104 of the Laws of the extraordinary session of the Mississippi Legislaure, 1955, and asserts that said two chapters are the best evidence of their contents.

35. This Defendant denies the averments of Paragraph 35 of the Complaint. The more stringent requirements for registration put in force by the amendment to Section 244 of the 1890 Constitution of the State of Mississippi and the legislation adopted pursuant thereto apply to every Mississipian who applies for registration, regardless of his or her race, color previous condition of servitude. The exemption from those additional requirements granted therein to those who had registered and were qualified electors of the state prior to January 1, 1954, was given to all who [fol. 526] fell within such category, regardless of their race, color or previous condition of servitude. Every Mississippian who was eligible for registration prior to January 1, 1954, and who neglected to register prior to January 1, 1954, has only himself or herself—not his or her race, color or previous condition of servitude—to blame for the fact that he or she thereafter became subject to the more stringent requirements imposed by the amendment to Section 244 of the Constitution of 1890 of the State of Mississippi and the legislation adopted pursuant thereto. It is obvious that in the course of a few years all qualified electors of Mississippi will have been subjected to and will have met the requirements of said amendment.

36. This Defendant admits that since 1955 he as well as many other registrars in Mississippi have enforced the requirements of Section 244, as amended, when negroes have attempted to register to vote, by requiring negroes to interpret sections of the Mississippi Constitution and to demonstrate their understanding of the duties and obligations of citizenship on the form prescribed by the State Board of Election Commissioners. Since 1955, he and the other registrars have also enforced the requirements of Section 244, as amended, when white persons have attempted to register to vote, by requiring white persons to interpret sections of the Mississippi Constitution and to demonstrate their understanding of the duties and obligations of citizenship [fol. 527] on the forms prescribed by the State Board of Election Commissioners.

37. This Defendant is without knowledge or information sufficient to form a belief as to the averments contained in Paragraph 37 of the Complaint.

38. This Defendant denies the averments of Paragraph

38 of the Complaint except that he admits that registrars of voters may select the particular section of the Constitution of the State of Mississippi which an applicant for registration is called upon to read, write and interpret. The registrars are not vested with unlimited discretion to determine the qualifications of applicants for registration. Pursuant to the provisions of Section 248 of the Constitution of 1890 of the State of Mississippi, which provides:

> "Suitable remedies by appeal or otherwise shall be provided by law, to correct illegal or improper registration and to secure the elective franchise to those who may be illegally or improperly denied the same."

there has been enacted into law—

Section 2111 of the Code of 1942 Recompiled which provides that—

> "If any registrar appointed by law to register votes, shall intentionally refuse or neglect to register any voter entitled to registration, or register any voter not entitled to registration, he shall be punished, on conviction, by imprisonment in the penitentiary not less than [fol. 528] one year nor more than three years."

Section 3240 of the Code of 1942 Recompiled which requires the county election commissioners to meet on the Tuesday after the third Monday in March of every year and revise registration books by erasing therefrom the names of all persons erroneously thereon and to register thereon the names of all persons who have duly applied to be registered and have been illegally denied registration.

Section 3224 of the Code Recompiled which provides:

> Any person denied the right to register as a voter may appeal from the decision of the registrar to the Board of Election Commissioners by filing with the registrar, on the same day of such denial or within five days thereafter, a written application for appeal."

Section 3226 of the Code of 1942 Recompiled which requires the county election commissioners to meet at the courthouse on the first Monday in October of every year to "hear and determine all appeals from the decisions of

the registrar of their county, allowing or refusing the application of electors to be registered; and they shall correct illegal or improper registrations, and shall secure the elective franchise, as effected by registration, to those who may be illegally or improperly denied the same."

[fol. 529] Sections 3113 and 3226.5 of the Code of 1942 Recompiled which requires the county election commissioners to meet on the third Tuesday in May before the first primary election for congressmen in the years when congressmen are elected, and on the third Monday of July prior to any other regular election, and five days before and other election, and carefully revise the registration books by erasing therefrom the names of all persons erroneously thereon and to register thereon the names of all persons who have duly applied to be registered and have been illegally denied registration, and to hear and determine any appeals which may have been perfected and which are pending on said dates from the decisions of the registrar of their county allowing or refusing the applications of persons to be registered.

Sections 3239 and 3226.5 of the Code of 1942 Recompiled which requires the county election commissioners to meet on the first Monday of October preceding a general election, and five days before any other election, and carefully revise the registration books by erasing therefrom the names of all persons erroneously thereon and to register thereon the names of all persons who have duly applied to be registered and have been illegally denied registration, and to hear and determine any appeals which may have been perfected and which are pending on said dates from the decisions of the registrar of their county allowing or refusing the application of persons to be registered.

[fol. 530] Section 3227 of the Code of 1942 Recompiled which provides with respect to appeals taken pursuant to Section 3224—

> "All cases on appeals shall be heard by the boards of election commissioners de novo, and oral evidence may be heard by them; and they are authorized to administer oaths to witnesses before them; and they have power to subpoena witnesses, and to compel their attendance; to send for persons and papers; to require the sheriff and constables to attend them and to exe-

> cute their process. The decisions of the commissioners in all cases shall be final as to questions of fact, but as to matters of law they may be revised by the circuit and Supreme Courts. The registrar shall obey the orders of the commissioners in directing a person to be registered, or a name to be stricken from the registration books."

Section 3228 of the Code of 1942 Recompiled which gives any elector aggrieved by the decision of the county election commissioners the right of appeal to the circuit court, on the filing of a bill of exceptions thereto.

Section 3230 of the Code of 1942 Recompiled which provides—

> "Should the judgment of the circuit court be in favor of the right of an elector to be registered, the court [fol. 531] shall so order, and shall, by its judgment, direct the registrar of the county forthwith to register him."

39. In answer to Paragraph 39 of the Complaint this Defendant admits the Mississippi Constitution contains 285 sections, denies the other allegations of said paragraph, and says that the Mississippi Constitution is itself the best evidence of its contents.

40. This Defendant denies the allegations of Paragraph 40 of the Complaint, and in addition asserts that the states of the union were given by the Constitution of the United States, the exclusive right and prerogative to prescribe the qualifications of voters and hence the decision as to those qualifications must be left to the states and not usurped by the federal executive or judiciary. She also asserts that Mississippi has the constitutional right to decide that the dangers and problems inherent in the times in which we live are such that the welfare of Mississippi and the nation requires a literate and informed electorate and to take steps to obtain such electorate by requiring that applicants for registration give a reasonable interpretation of a section of Mississippi's constitution.

41. This Defendant denies the averments of Paragraph 41 of the Complaint.

42. This Defendant denies that Section 244 of the Mississippi Constitution, as amended, is unconstitutional, and specifically denies the averments of subparagraphs (a), (b), [fol. 532] (c), (d), and (e) of Paragraph 42 of the Complaint.

43. This Defendant denies the allegations of Paragraph 43 of the Complaint, but admits that she and her deputy, unless restrained by order of this Court, will continue without discrimination to enforce Section 244, as amended, and its implementing statutory provisions as qualifications for registration to vote.

Answer to Second Claim

44. This Defendant, in answer to Paragraph 44 of the Complaint, adopts her answers to Paragraphs 1 through 34, and to Paragraph 37, of the Complaint.

45. This Defendant denies the allegations of Paragraph 45 of the Complaint except this Defendant admits that in 1960 the Mississippi legislature passed a joint resolution to submit to the qualified electors of Mississippi for their adoption or rejection an amendment to or change in Article 12 of the Mississippi Constitution of 1890 by adding thereto the following as Section 241-A thereof:

> "Section 241-A. In addition to all other qualifications required of a person to be entitled to register for the purpose of becoming a qualified elector, such person shall be of good moral character."

This Defendant also admits the amendment was submitted to the qualified electors of the state for ratification or adoption at an election held November 8, 1960, and was adopted. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments that on November 8, 1960, there were appromixately 525,000 registered voters in Mississippi who were elligible to vote [fol. 533] on said proposed amendment, and that of that number about ninety-five percent were white and fewer than five percent were negro.

46. This Defendant admits the averments of Paragraph 46 of the Complaint.

47. This Defendant admits the averments of Paragraph 47 of the Complaint except that this Defendant is wishout knowledge or information sufficient to form a belief as to whether the steps undertaken by the United States were undertaken "throughout the State of Mississippi," and as to whether the action mentioned in said Paragraph was a matter of common knowledge throughout the State of Mississippi.

48. This Defendant admits the averments of Paragraph 48 of the Complaint but adds that no such injunction such as is described therein as having been issued against the Registrar of Forrest County could be justifiably issued by any Court against this Defendant because this Defendant does not engage, and never has engaged, in discriminatory acts and practices based on race in the registration for voting in Leflore County. If the Registrar of Forrest County has engaged in discriminatory acts and practices based on race in the registration for voting in Forrest County, that fact, if it be a fact, can in no way prejudice this Defendant and is immaterial and impertinent to this suit.

49. This Defendant denies the allegations of Paragraph 49 of the Complaint except that she admits the Mississippi legislature in 1962 adopted Chapters 575, 569, 572 and 573 of Laws of Mississippi of 1962 and asserts that said chapters are the best evidence of their contents.

[fol. 534] 50. This Defendant denies the averments of Paragraph 50 of the Complaint. The requirement that a person to be entitled to register for the purpose of becoming a qualified elector shall be of good moral character applies to every Mississippian who applies for registration, regardless of his or her race, color, or previous condition of servitude. Registration to vote is not denies or abridged on account of race, color, or previous condition of servitude, by the fact that those offering to register prior to the effective date of the legislation implementing Section 241-A of the Constitution of the State of Mississippi were not registered to be of good moral character and those offering to register subsequent to such date are, and have been , subject to such requirement. That fact is applicable to all citizens, regardless of race, color, or previous condition of servitude. Every Mississippian who was eligible

for registration prior to such date, and who neglected to register prior to such date, has only himself or herself—not his or her race, color, or previous condition of servitude—to blame for the fact that he or she thereafter became subject to such requirement.

The Good moral character requirement for registration is no more a device for discrimination against negroes than is the good moral character requirement for admission to practice before the Supreme Court of the United States. It does not constitute a means of discrimination which would make detection more difficult.

[fol. 535] 51. This Defendant denies the averments of Paragraph 51 of the Complaint.

52. This Defendant denies the averments of Paragraph 52 of the Complaint.

53. This Defendant denies the averments of Paragraph 53 of the Complaint.

54. This Defendant denies the allegation of Paragraph 54 of the Complaint except this Defendant admits she will, unless restrained by order of this Court, enforce without discrimination Section 241-A and its implementing statutory provisions as a qualification for registration to vote. Defendant has never rejected any application for voter registration on the ground that the applicant was not of good moral character.

Answer to Third Claim

55. This Defendant, in answer to Paragraph 55 of the Complaint, adopts her answers to Paragraphs 1 through 34, and to Paragraph 37, and to Paragraphs 45 through 49, of the Complaint.

56. This Defendant denies the allegations of Paragraph 56 of the Complaint except this Defendant admits the adoption of Chapter 102 of the Laws of the Extraordinary Session 1955 and asserts that said chapter is the best evidence of its contents.

57. This Defendant admits the adoption of the Civil Rights Act of 1957, asserts that the Act is itself the best evidence of its contents, and denies that said Act authorized the Attorney General of the United States "to bring civil actions to protect the right to vote without distinction of race or [fol. 536] color."

58. This Defendant denies the allegations of Paragraph 58 of the Complaint except this Defendant admits that the Mississippi Legislature adopted Chapter 510 of the Laws of 1960, that on April 15, 1960, said legislature adopted chapter 449 of the Laws of 1960, and that at a later date, May 6, 1960, the Congress passed Title III of the 1960 Civil Rights Act, and this Defendant asserts that said statutes and resolution are the best evidence of their contents.

59. This Defendant denies the averments of Paragraph 59 of the Complaint except that this Defendant admits that some registration forms, including some forms received by the Defendant, H. K. Whittington, have been destroyed under the authority of said Chapter 449.

60. This Defendant denies the averments of Paragraph 60 of the Complaint. This Defendant has not heretofore destroyed voter registration records in violation of Title III of the Civil Rights Act of 1960, and she has no intention of doing so.

Answer To Fourth Claim

61. In answer to Paragraph 61 of the Complaint, this Defendant adopts her answers to Paragraphs 1 through 34, to Paragraph 37, to Paragraphs 45 through 49, and to Paragraphs 56 through 58 of the Complaint.

62. This Defendant admits that in 1961 and 1962 negroes conducted oveter registration drives in some counties in Mississippi, admits that negroes were candidates for the Office of Representative in the Congress of the United States, and admits that these facts were publicized. This [fol. 537] Defendant denies the other allegations of Paragraph 62 of the Complaint.

63. This Defendant supposes the averments of Paragraph 63 of the Complaint are true but he also assumes that many explanations, in addition to the explanation set forth in said paragraph, were also made to the Court in that case. In any event, this Defendant denies that the explanations of counsel for Plaintiff made to the Court in that case had the repercussions attributed to it by Plaintiff. The explanations to the Court of counsel for Plaintiff in the case mentioned in said paragraph are of small importance, even of no importance, to the people of Mississippi, and any results therefrom have been limited to actions taken in that

particular case. This Defendant never heard of the alleged explanation to the Court until she learned of it from the Complaint herein.

64. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 64 of the Complaint. Answering further, this Defendant says that she has not turned down any application to register because of the omission therein of applicant's precinct, the failure to sign the oath to the application, or the failure to sign on the line below the minister's oath on Page 3 of the application. This Defendant says further that she is not responsible for and cannot be prejudiced by the alleged actions of the Forrest County registrar.

65. This Defendant denies the allegations of Paragraph 65 of the Complaint except this Defendant admits that on April 10, 1962, the U. S. Court of Appeals for the Fifth Circuit granted an injunction pending appeal against the [fol. 538] Registrar of Forrest County, Mississippi, and the State of Mississippi, and asserts that said injunction is the best evidence of its contents. No such injunction has been issued against this Defendant and no such injunction could rightfully be issued against this Defendant.

66. This Defendant denies the allegations of Paragraph 66 of the Complaint except this Defendant admits that the Mississippi Legislature adopted during its 1962 Session House Bills 900, 901, 905, 822, 904, and 903, and asserts that said House Bills are the best evidence of their respective contents.

67. This Defendant denies the allegations of Paragraph 67 of the Complaint.

68. This Defendant denies the averments of Paragraph 68 of the Complaint.

69. This Defendant admits that she and the other registrars are required to apply the requirements of the statutes of this state, but she denies that those requirements are onerous or that their existence, enforcement and threat of enforcement have deterred, are deterring or will continue to deter otherwise qualified negroes from applying to register to vote. This Defendant says further that she has never disqualified any applicant, negro or white, for any formal, technical, or inconsequential error or omission on

the application form, and that the publication of the names of applicants for registration has never resusted in Leflore County in any challenge to an applicant.

70. This Defendant denies the allegations of Paragraph 70 of the Complaint except this Defendant admits that she [fol. 539] and her deputy, unless restrained by order of this Court, will enforce the registration requirements of this state.

71. This Defendant denies that the Plaintiff is entitled to the relief prayed for or to any other relief in this action.

Bell & McBee, Attorneys at Law, 213 River Road, Greenwood, Mississippi. Lott & Sanders, Attorneys at Law, Aven Building, Greenwood, Mississippi. By Hardy Lott, Attorneys of Record herein for the Defendant, Mrs. Martha Turner Lamb, Circuit Clerk and Register of Leflore County, Mississippi.

[fol. 540] Certificate of service omitted in printing.

[fol. 541] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3,312

[Title omitted]

ANSWER OF WENDELL R. HOLMES, CIRCUIT CLERK AND REGISTRAR OF PIKE COUNTY, MISSISSIPPI, ONE OF THE DEFENDANTS—Filed May 13, 1963

Comes now Wendell R. Holmes, Circuit Clerk and Registrar of Pike County, Mississippi, one of the defendants, hereinafter referred to in this Answer as "this defendant" and for his answer to the Complaint says:

First Defense

The complaint fails to state a claim against the defendant upon which relief can be granted.

Second Defense

This court as composed lacks jurisdiction over the subject matter of this action and over this defendant.

Answer to First Claim

1. The jurisdiction of the plaintiff in this action is denied by this defendant.

2. This defendant admits that the State of Mississippi is joined as a party defendant but denies that the State of Mississippi is properly joined as a defendant.

3. Admitted, except that this defendant specifically denies the existence of the agency relationship as alleged in this paragraph.

4. Admitted.

5. Admitted.

[fol. 542] 6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. This defendant denies that he, as a Registrar, has ever been an agent of the Mississippi State Board of Election Commissioners and an agent of the State of Mississippi and denies that he, as a Registrar, as such agent administers and enforces the Mississippi Constitutional and statutory provisions which set out the requirements and procedure for the registration of the voters. This defendant would show unto the Court that he is an appointee of the Mississippi State Board of Election Commissioners and that, as such appointee, he performs only those duties imposed upon him by law as regarding the registration of voters.

11. Denied.

12. This defendant denies that there are now, or were at the time of the filing of the Complaint herein, approximately 9,989 whites registered on the Registration books of Pike County and denies that there are now, or were at the time of the filing of the Complaint, approximately 124 Negroes registered on the Registration books of Pike County. The Registration books from which the aforestated figures were apparently obtained include a large number of whites and Negroes who have died since the last general registra-

tion and a large number of both races who have moved from the county since said registration whose names have not been purged from the Registration books. Further, the "voting age population" stated in this paragraph of the Complaint does not reflect the true facts unless due consideration is given to the residence requirements of the eligibility to vote stated in the statutes related to qualification to vote in the State of Mississippi. This defendant is not advised of the statistics stated in the paragraph as applied to the other counties and for this reason neither admits nor denies the correctness thereof.

13. Denied.

14. Denied, because registration as provided by law was a prerequisite to becoming a qualified elector in Mississippi prior to 1890.

[fol. 543] 15. Denied.

16. Denied, except that a State Constitution was adopted in 1890 by a Mississippi Constitutional Convention.

17. It is admitted that Section 244 was incorporated in the Mississippi Constitution of 1890 but it is specifically denied by this defendant that said section was designed to accomplish the purposes alleged by the plaintiff in paragraph 16 of the Complaint, the true purpose behind the adoption of Section 244 was to upgrade the electorate of the State of Mississippi.

18. It is admitted that registration has been and is a prerequisite to voting or becoming a qualified elector but said registration has been required by law since the Constitution of 1869 was adopted. It is denied that registration is permanent.

19. It is denied by this defendant that the Mississippi Constitution of 1890 has resulted in the maintenance and promotion of white political supremacy and a racially segregated society in the State of Mississippi but this defendant would show that a racially segregated society has always existed in the State of Mississippi, which type of society has existed because of practice, custom and usage and not as a result of the enforcement of any unconstitutional law or statute.

20. The statistical allegations of this paragraph are neither admitted or denied and the percentage of Negro

males and white males becoming registered voters after 1899 is neither admitted or denied and this defendant will require strict proof thereof.

21. This defendant denies that during the period from 1899 to approximately 1952, white political supremacy was maintained in Mississippi and promoted by the methods stated in sub-paragraphs (a), (b) and (c) and this defendant would show unto the Court that during said period Negroes were allowed to register to vote on the same basis as any other applicant and Negroes were not excluded from the Democratic primary elections which exclusion resulted in victory in a Democratic primary, which victory was tantamount to an election since, during said period, the nominee of the Democratic party usually was successful in the General Elections.

[fol. 544]

22. It is admitted that the United States Court of Appeals for the Fifth Circuit in June, 1951, rendered a decision, but the legal effect and interpretation thereof is as stated in the decision and not as alleged by the plaintiff in this paragraph and no emphasis was placed by the Court on any particular ruling, of which there were several stated in the decision.

23. Admitted.

24. It is admitted that a proposed amendment to Section 244 of the Mississippi Constitution of 1890 was submitted to the qualified electors and was adopted by the Mississippi Legislature in 1952 and the proposed amendment was submitted to the qualified electors voting in the general election and it is admitted that the proposed amendment was not adopted but the adoption resulted in the failure of a majority of the qualified electors voting in the election not voting for the proposed amendment and not for the reasons as stated in paragraph 24 of the Complaint.

25. It is denied that the Legislature of Mississippi did not meet in 1953. The Legislature of Mississippi in 1954 did adopt a proposed amendment to Section 244 of the Constitution of 1890 of the State of Mississippi, Chapter 427 Laws of 1954, and the proposed amendment to the section reads as follows:

> "Section 244. Every elector shall, in addition to the foregoing qualifications be able to read and write any section of the Constitution of this State and give a rea-

sonable interpretation thereof to the county registrar. He shall demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government. "The person applying to register shall make a sworn, written application for registration on a form to be prescribed by the State Board of Election Commissioners, exhibiting therein the essential facts and qualifications necessary to show that he is entitled to register [fol. 545] and vote, said application to be entirely written, dated and signed by the applicant in the presence of the county registrar, without assistance or suggestion from any person or memorandum whatever; provided, however, that if the applicant is unable to write his application by reason of physical disability, the same, upon his oath of such disability, shall be written at his unassisted dictation by the county registrar.

"Any new or additional qualifications herein imposed shall not be required of any person who was a duly registered and qualified elector of this state prior to January 1, 1954.

"The Legislature shall have the power to enforce the provisions of this section by appropriate legislation."

and this defendant would show unto the Court that the legal effect of the Section is as stated therein and not necessarily as concluded and opinionated as stated by the plaintiff in paragraph 25 of the Complaint.

26. This defendant is without knowledge or information sufficient to form a belief as regarding the allegations of this paragraph 26 and strict proof of the same will be required by this defendant at a hearing hereon.

27. Denied. The proposed amendment to Section 244 of the Constitution of 1890 of the State of Mississippi is clear, unambiguous and legal and constitutional in every respect.

28. Denied, but this defendant would show unto the Court that during the regular 1954 session of the Mississippi Legislature a concurrent resolution was adopted by the

House of Representatives on April 7, 1954 and by the Senate on April 28, 1954 whereby the Legal Educational Advisory Committee was constituted and the joint resolution fixed and established the purposes and duties of said committee, it being specifically denied that the purposes of [fol. 546] the committee are as averred in paragraph 28 of the Complaint.

29. It is admitted that citizen councils (not "white citizen councils") were formed in Mississippi following the decision of the Supreme Court of the United States on May 17, 1954 in the case of Brown vs. Board of Education of Topeka, 347 U. S. 483, 98 L. Ed. 873, but the purposes of citizen councils as stated in this paragraph by the plaintiff are denied and the adoption of the first state-wide project of the councils as stated in this paragraph is denied.

30. On September 7, 1954 the Legislature of the State of Mississippi was convened in an extraordinary session to consider an amendment to the constitution of the State of Mississippi which amendment was as recommended by the Mississippi Legal Educational Advisory Committee, all of which is set forth in the proclamation of the Governor of the State of Mississippi convening the session.

31. This defendant is not advised as to the statistical arguments contained in this paragraph and therefore denies the same.

32. Admitted, but this defendant would show unto the Court that the outcome of this election was not predetermined by the race of the voters participating therein.

33. It is admitted that in January, 1955 an extraordinary session of the Mississippi Legislature was called, the purposes of which are set forth in the proclamation of the Governor dated December 29, 1954.

34. This defendant admits the adoption of Chapters 102 and 104 of the Laws of the Extraordinary Session of the Mississippi Legislature of 1955, the legal effect of which is as stated in said laws.

35. Denied, and this defendant, further by way of answer, would show unto the Court that the requirements referred to by plaintiff as being "more stringent" apply to every Mississippian who applies for registration, regardless of his or her race, color or previous condition of servitude and the same application is applicable to any

exemption that may be granted by said laws. Likewise, the statutes regulating the registration of voters in effect prior to January 1, 1954 apply to all citizens, regardless of their race, color or previous condition of servitude and [fol. 547] the fact that some citizens may have treated so lightly and frivolous their responsibility as a citizen to qualify to vote does not invalidate the exemption granted by said statutes.

36. This defendant admits that since 1955 he has enforced the requirements of Section 244, as amended, which enforcement has been applied by this defendant in the same manner and to the same extent to Negroes and whites alike.

37. The statistical averments of this paragraph are denied for the reason that this defendant is without knowledge or information sufficient to form a belief thereasto.

38. Denied, except that this defendant does admit that he as a Registrar of voters may select the particular section of the Constitution of the State of Mississippi, which an applicant for registration is called upon to read, write and interpret. This defendant, as well as other registrars, is not vested with unlimited discretion to determine the qualification of applicants for registration. Pursuant to the provisions of Section 248 of the Constitution of 1890 of the State of Mississippi, which provides:

> "Suitable remedies by appeal or otherwise shall be provided by law, to correct illegal or improper registration and to secure the elective franchise to those who may be illegally or improperly denied the same."

there has been enacted into law—

> Section 2111 of the Code of 1942 Recompiled which provides that —
>
> "If any registrar appointed by law to register votes, shall intentionally refuse or neglect to register any voter entitled to registration, or register any voter not entitled to registration, he shall be punished, on conviction, by imprisonment in the penitentiary not less than one year nor more than three years."

[fol. 548] Section 3240 of the Code of 1942 Recompiled which requires the county election commissioners to meet on the Tuesday after the third Monday in March of every year and revise the registration books by erasing therefrom the names of all person erroneously thereon and to register thereon the names of all persons who have duly applied to be registered and have been illegally denied registration.

Section 3224 of the Code of 1942 Recompiled which provides:

> "Any person denied the right to register as a voter may appeal from the decision of the registrar to the board of election commissioners by filing with the registrar, on the same day of such denial or within five days thereafter, a written application for appeal."

Section 3226 of the Code of 1942 Recompiled which requires the county election commissioners to meet at the courthouse on the first Monday in October of every year to "hear and determine all appeals from the decisions of the registrar of their county, allowing or refusing the applications of electors to be registered; and they shall correct illegal or improper registrations, and shall secure the elective franchise, as effected by registration, to those who may be illegally or improperly denied the same."

Sections 3113 and 3226.5 of the Code of 1942 Recompiled which requires the county election commissioners to meet on the third Monday in May before the first primary election for congressmen in the years when congressmen are elected, and on the third Monday of July prior to any other regular election, and five days before any other election, and carefully revise the registration books by erasing therefrom the names of all persons erroneously thereon and to register thereon the names of all persons who have duly applied to be registered and have been illegally denied registration, and to hear and determine any appeals which may have been perfected and which are pending on said dates from the decisions of the registrar of their county allowing or refusing the applications of persons to be registered.

Sections 3239 and 3226.5 of the Code of 1942 Recompiled which requires the county election commissioners to meet

[fol. 549] on the first Monday of October preceding a general election, and five days before any other election, and carefully revise the registration books by erasing therefrom the names of all persons erroneously thereon and to register thereon the names of all persons who have duly applied to be registered and have been illegally denied registration, and to hear and determine any appeals which may have been perfected and which are pending on said dates from the decisions of the registrar of their county allowing or refusing the application of persons to be registered.

Section 3227 of the Code of 1942 Recompiled which provides with respect to appeals taken pursuant to Section 3224—

> "All cases on appeals shall be heard by the boards of election commissioners de novo, and oral evidence may be heard by them; and they have power to subpoena witnesses, and to compel their attendance; to send for persons and papers; to require the sheriff and constables to attend them and to execute their process. The decisions of the commissioners in all cases shall be final as to questions of fact, but as to matters of law they may be revised by the circuit and Supreme Courts. The registrar shall obey the orders of the commissioners in directing a person to be registered, or a name to be stricken from the registration books."

Section 3228 of the Code of 1942 Recompiled which gives any elector aggrieved by the decision of the county election commissioners the right of appeal to the circuit court, on the filing of a bill of exceptions thereto.

Section 3230 of the Code of 1942 Recompiled which provides—

> "Should the judgment of the circuit court be in favor of the right of an elector to be registered, the court shall so order, and shall, by its judgment, direct the [fol. 550] registrar of the county forthwith to register him."

Statutes which give any elector aggrieved by any judgment of the circuit court against his right to be registered

the right of appeal to the Supreme Court of Mississippi.

Those statutes, which provide an administrative remedy described by the Fifth Circuit Court of Appeals as "simple and cheap", furnish ample and abundant safeguards against any arbitrary action by a registrar and so limit his discretion in the matter of determining the sufficiency or insufficiency of an application for registration that his decisions with respect thereto can only be described as highly tentative and entirely lacking in finality.

39. This defendant denies the averments of paragraph 39 of the Complaint and asserts that the Constitution of the State of Mississippi is the best evidence of its contents.

40. Denied, and in this regard this defendant refers to the First Article of the Constitution of the United States in which the right and duty to prescribe the qualification of voters is vested in the respective States of the Union, which rights and duties are not to be usurped by the federal judiciary. This defendant would further show unto the Court that good government requires a literate, intelligent and informed electorate and the Republican form of government that has been established might very well be destroyed if a continuous and systematic effort is not made to upgrade the electorate.

41. Denied, this defendant specifically stating that he has never used nor is he now using nor will he ever use the interpretation test and the duties and obligations test to deprive otherwise qualified Negro citizens of the right to register to vote and specifically denies that these tests, their enforcement or threat of their enforcement, have deterred, are deterring and will continue to deter otherwise qualified Negroes in Mississippi for applying for registration to vote. This defendant states, by way of this Answer, that no one, white or Negro, has been deterred by him or his office from making application because of the existence or the enforcement, of the tests aforementioned. Again, [fol. 551] this defendant denies that he as Registrar is an agent of the State of Mississippi. Further, this defendant specifically denies the existence of any so-called "pattern and practice of racial discrimination" as charged in the Amendment to Complaint.

42. Denied, and this defendant specifically denies the

averments of subparagraphs (a), (b), (c), (d), and (e) of paragraph 42 of the Complaint.

43. Admitted as to the acts and actions of this defendant.

Answer to Second Claim

44. This defendant in answer to paragraph 44 of the Complaint, adopts his answers to 1 through 34 and to paragraph 37 of the Complaint.

45. A resolution proposing an amendment to or change in Article XII of the Constitution of Mississippi, 1890, was adopted during the Regular 1960 Session of the Mississippi Legislature. The proposed amendment provided for the adding thereto the following Section 241-A thereof:

> "Section 241-A. In addition to all other qualifications required of a person to be entitled to register for the purpose of becoming a qualified elector, such person shall be of good moral character."

The proposed amendment was submitted to the qualified electors of the State of Mississippi for ratification or adoption at a general election held on November 8, 1960 and was adopted by a majority of the qualified voters participating in said election. This defendant is without knowledge or information sufficient to form a belief as to the statistical averments of paragraph 45 and therefore denies the same. Further, this defendant states that an analysis of the returns of the election would indicate that the votes for and against the adoption of the proposed amendment were not predetermined by the race of the voters.

46. Admitted.

47. This defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 47 of the Complaint and, therefore, denies the same.

[fol. 552] 48. This defendant admits that the United States has instituted litigation against registrars in the State of Mississippi for the purpose of obtaining injunctive relief to prevent registrars from engaging in certain activities and admits, on information and belief, that on April 10, 1962, the Circuit Court of Appeals for the Fifth Circuit did issue an injunction against the Circuit Clerk and

Registrar of Forrest County, Mississippi, but this defendant is not fully advised as to all of the provisions, legal effect and construction of said injunction. Nevertheless, this defendant states that no such injunction could justifiably be issued by any court against this defendant because this defendant does not engage, and never has engaged, in discriminatory acts and practices based on race in the registration of voting in Pike County, Mississippi. Further, by way of Answer this defendant states that discriminatory acts and practices said to have been committed by the Registrar of Forrest County, Mississippi, can in no wise prejudice this defendant because this defendant was not a party to said suit and the judgment of the court in said proceedings cannot in any manner apply against this defendant.

49. This defendant denies the allegations of paragraph 49 of the Complaint, except this defendant admits that the Mississippi Legislature adopted, in 1962, House Bill No. 899, Chapter 575, General Laws of Mississippi 1962; House Bill No. 905, Chapter 569, General Laws of Mississippi 1962; House Bill No. 822, Chapter 572, General Laws of Mississippi 1962; and House Bill No. 904, Chapter 573, General Laws of Mississippi 1962, but asserts that said House Bills are the best evidence of their contents.

50. Denied. The requirement that a person be entitled to register for the purpose of becoming a qualified elector shall be of good moral character applies to every person who applies for registration, regardless of his or her race, color or previous condition of servitude and the right of a citizen to vote is not denied or abridged on account of race, color or previous condition of servitude by the fact that applicants to register prior to the effective date of the legislation implementing Section 241-A of the Constitution of the State of Mississippi were not required to be of good moral character and those offering to register subsequent [fol. 553] to such date are, and have been, subject to such requirement.

The moral character requirement for registration is not a device for discrimination against Negroes nor whites and such requirement has been promulgated and enforced in many areas of Federal and State governments and in society throughout the United States.

51. Denied. Section 241-A of the Constitution of the State of Mississippi does not vest unlimited discretion in the registrars of voters to determine the good moral character of applicants for registration. The requirement is neither vague nor indefinite and the requirement does not inable nor require the registrars to arbitrarily determine such facts as plaintiff avers in sub-paragraphs (a), (b), (c), and (d).

52. Denied. No applicant in Pike County, Mississippi has ever been disqualified because of the character qualification and no prospective applicant, Negro or white, has been deterred or is being deterred to apply for registration because of the character qualification requirements. No otherwise qualified Negro has been deprived or will be deprived of his or her rights to register because of the threatened use of, or the use of the character requirement. This defendant again reiterates that he is not an agent of the State of Mississippi and specifically denies the existence of any so-called practice and pattern of racial discrimination."

53. Denied.

54. This defendant admits that he will, unless restrained by order of this Court, continue to enforce Section 241-A and its implementing statutory provisions as a qualification for the registration to vote, but he adds that he will, in continuing to enforce said section and said statutory provisions, continue to do so in a lawful and legal manner and not in any manner as alleged by the plaintiff.

Answer to Third Claim

55. This defendant in answer to paragraph 55 of the Complaint, adopts his answers to paragraphs 1 through 34 and to paragraph 37 and paragraphs 45 through 49 of the Com- [fol. 554] plaint.

56. This defendant admits that the Mississippi Legislature in 1955 passed a statute (Section 3209.6, Mississippi Code, 1942, Annotated) fixing certain duties for the State Board of Election Commissioners and the interpretation of the plaintiff of the statute is neither admitted nor denied, it being the contention of this defendant that said statute

is clear and unambiguous and capable of interpretation by this Court without the aid of conclusions averred by plaintiff.

57. This defendant denies the allegations of paragraph 57 of the Complaint, except this defendant admits that in 1957 the Congress of the United States enacted the Civil Rights Act of 1957, but asserts that said Act itself constitutes and contains the best evidence of its contents. This defendant denies that said Act vested the Attorney General of the United States with authority to bring civil actions to protect the right to vote without *distinction* of race or color.

58. This defendant admits that Congress adopted Section 1974 of Title 42 of the United States Code Annotated on May 6, 1960 and he also admits that the Mississippi Legislature adopted Chapter 449 of the Laws of 1960. This defendant points out, however, that the latter was adopted on April 15, 1960, which was prior to the former on May 6, 1960.

59. Denied, and this defendant specifically states that he is without sufficient information to form a belief as to what H. K. Whittington, another defendant, or any other defendant, has done with reference to the performance of his or her duties as registrars and, further, this defendant cannot be held responsible for any act that may have been committed by H. K. Whittington or any other defendant contrary to law. This defendant denies that he is an agent of the State of Mississippi and denies that there are requirements to register that are onerous and therefore the enforcement of the same could not result in the deprivation of any right constitutionally vested in any Negro or white citizen. Again, this defendant denies the existence of any so-called "pattern and practice of racial discrimination" as charged by the plaintiff.

[fol. 555] 60. Denied, this defendant stating unequivocably that he has not nor does he intend to commit any act in violation of Section 1974, Title 42 of the United States Code Annotated.

Answer to Fourth Claim

61. This defendant in answer to paragraph 61 of the Complaint adopts his answer to paragraphs 1 through 34, to paragraph 37, to paragraphs 45 through 49, and to paragraphs 56 through 58 of the Complaint.

62. This defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 62 of the Complaint and therefore denies the same.

63. This defendant is not advised as to what suits or litigation that has been initiated by the United States against registrars of the State of Mississippi and, assuming the allegations of paragraph 63 are facts, the litigation, statements of counsel, pleading of the parties and results therefrom have no effect on this defendant and the outcome of this suit that has been instituted against him.

64. This defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 64 of the Complaint and would further show unto the Court that the allegations of the plaintiff are argumentative and speculative when plaintiff refers to what "highly educated" Negro applicants did or did not do. Further, this defendant states that, regardless of the actions which the Registrar of Forrest County may have taken or the registrars of any other county may have taken, such actions of the Registrar can in no way prejudice this defendant, and, further, this defendant would show unto the Court that no applicant, Negro or white, has ever been denied by this defendant the right to register and become qualified to vote because of any formal, technical and inconsequential error made by the applicant in his application to register.

65. This defendant is not fully advised as to the effect of the decision of the United States Court of Appeals for the Fifth Circuit entered on April 10, 1962, this defendant stating that the law of that case therein as stated and this Court [fol. 556] may construe the legal effect of the decision without the aid of opinionated averments of plaintiff in this cause. Further, the answer to this paragraph by this defendant is not to be construed as an admission of the constitutionality of the Civil Rights Acts said to have been a matter of controversy in said proceedings.

66. This defendant admits that the Mississippi Legislature adopted during the 1962 Session, House Bill 900, House Bill 901 and House Bill 905, House Bill 822, House Bill 904 and House Bill 903, but this defendant specifically denies that the purpose and effect of said legislation was to deter, hinder, prevent, delay and harass Negroes and to make it more difficult for Negroes to become registered voters, or to facilitate discrimination against Negroes, or to make it more difficult for plaintiff to protect the rights of its citizens to vote without distinction of race or color.

(a) House Bill 900 is not unconstitutional.
Plaintiff misconstrues the true meaning and effect of House Bill 900. A correct construction is that the statute requires every applicant for registration, regardless of his race, color or previous condition of servitude to responsively and properly complete a simple application in order to register for voting and certainly the type of application actually used as authorized by the statute could not possibly facilitate discrimination against Negroes.

(b) House Bill 901 is not unconstitutional.
The elimination of the designation of race on the county poll books is indicative of the fact that the so-called package of legislation referred to by the plaintiff was for the purpose of avoiding discrimination rather than facilitating discrimination.

(c) House Bill 905 is not unconstitutional.
The requirement that a person have good moral character in order to register to vote is not an abuse of legislative authority in fixing and deter- [fol. 557] mining the requirements of a qualified elector. Such a requirement is a step forward in upgrading the electorate and demonstrates the interest of the State in preserving good government and this defendant again reiterates that such a requirement is applicable to all applicants seeking registration to vote whether they be white or Negro. Also, such a requirement of good moral character has been adopted before being eligible for employment with many governmental agencies, Federal and State, before being eligible for citizen-

ship, and before being privileged to practice many professions.

(d) House Bill 822 and House Bill 904 are not unconstitutional. These statutes demonstrate the almost limited power an applicant has to request and obtain a full hearing on his or her rejection to register to vote and the same demonstrates that the statutes are applicable to whites and Negroes alike and are conclusive that they do not impose onerous, arbitrary and unreasonable procedures on prospective registrants. No applicant to register should receive assistance in completing his or her application and taking the test prescribed by statutes and to advise an applicant to register of the specific reason of rejection, other than for moral character reasons, would defeat the very purpose of the statutes and as administered by this defendant were not to facilitate discrimination on Negroes or in any manner or respect to deter, hinder, prevent, delay and harass Negroes and make it more difficult for Negroes to become registered to vote than any other race.

67. This defendant denies that the "package of legislation" referred to in this paragraph is unconstitutional.

(a) House Bills 900 and 903:

[fol. 558] (1) No deprivation of the right to vote on account of race results because of formal, technical, or inconsequential errors or omissions by the applicant on the application form and this defendant has never denied the right to register because of any so-called formal, technical or inconsequential error or omission.

(2) The Negro cannot complain nor can the whites complain because current legislation have different requirements to register to vote from former statutes regulating such rights. Both races could have secured the so-called "preferential" treatment if interest had been shown in the fundamental rights of voting which are a necessary ingredi-

ent to good government. Indifference and apathy are not an excuse for now contending that statutes are unconstitutional.

(3) Plaintiff incorrectly concludes that the examination is hypertechnical and unreasonable and also misconstrues the relationship of the right to vote with good government, the latter being for the sole determination of the State.

(4) No unlimited discretion is granted this defendant as Registrar of voters of Pike County, Mississippi as evidenced by the fact that any complaining applicant may appeal from the decision of this defendant.

(5) It is not unreasonable and arbitrary for the application to require the signature of an applicant. Most applications for every purpose in life require a signature and the requirement of a signature on a registration application is no more a device to trap applicants than the requirement on all other applications required by white and Negroes in almost every area of life.

(6) This defendant is a Registrar of voters and not a teacher for prospective applicants to register and it would be a burden on his office to require a [fol. 559] conference with every applicant concerning the reason or reasons for the disqualification.

(b) House Bills 822 and 904:

(1) No harassment of Negroes has occurred in the registration of voters in Pike County, Mississippi, because of the publication of the names of applicants and the challenging of any applicant on his or her qualifications to become a qualified elector and, assuming that such challenges are made, ample power and authority is granted the applicant, white and Negro, "to have his day in Court".

(2) The assumption of the payment of cost is no different than as is applied to other administrative

and court proceedings and such imposition is not onerous, arbitrary and unreasonable. An applicant entitled to register cannot be charged with any cost.

(3) All of the statutes determine the qualifications of prospective registrants and no challenge can go outside the regulations provided for by said statutes, which statutes become the "objective standards" complained of by plaintiff.

(4) Again this defendant reiterates that the qualifications for registering to vote, now and in the past, have applied to whites and Negroes alike and no Negro citizen or white citizen can now complain that he or she failed to exercise his or her rights to register when former statutes governing such rights were in force and effect. Also, this defendant restates that registration in Mississippi is not permanent as heretofore stated by plaintiff.

(5) This defendant, like any other officer or judge, cannot unduly take any matter under advisement for an unreasonable period of time. The statutes give every applicant recourse if the final determi-
[fol. 560] nation is unduly withheld by this defendant and other registrars.

(6) It is a legitimate state interest to upgrade the electorate by the adoption and enforcement of fair, reasonable and impartial regulations determining the right to register to become a qualified elector.

(7) Plaintiff erroneously concludes that the statutes give the white community of Mississippi preferential treatment as regarding the qualifications to vote and is in error to state that this defendant or any one acting under his authority has harassed or intimidated Negro applicants for registration as this defendant has pursued the registration of voters without discrimination as regarding color, race or previous condition of servitude.

68. This defendant denies the allegations of paragraph 68 and refers to the statements contained in the immediate preceding paragraphs are explanations as the reasons for this denial.

69. This defendant admits that he and other registrars are required to apply the requirements of the statutes of this state but denies that such statutes regulating the right to become a qualified elector are onerous or that their existence and enforcement and threat of enforcement have deterred or are deterring or will continue to deter otherwise qualified Negroes applying to register to vote. This defendant is not an agent of the State of Mississippi and the application of the statutes which plaintiff contend are unconstitutional have not been applied by this defendant for the purpose of depriving Negroes of their right to register to vote and the adoption of the same and the use and threat of the same have not been pursuant to a pattern and practice of racial discrimination.

70. It is admitted by this defendant that he and his deputy will continue to enforce the registration laws of the State of Mississippi, but this defendant specifically denies that the enforcement of the same by this defendant has been for the purpose of depriving otherwise qualified Negro citizens of [fol. 561] their right to register to vote without distinction of race or color.

This defendant denies that the plaintiff is entitled to any relief as prayed for in the Complaint and respectfully submits that the Complaint should be dismissed against this defendant and the plaintiff be assessed with all costs as accrued in this behalf expended.

W. R. Holmes, Registrar of Pike County, Mississippi, One of the Defendants.

B. D. Statham, 110 North Cherry Street, Magnolia, Mississippi.

[fols. 562-563] Certificate of service omitted in printing

[fol. 564] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3312

[Title omitted]

INTERROGATORIES OF THE DEFENDANT, STATE OF MISSISSIPPI—Filed May 17, 1963

To: The United States of America, Plaintiff.

Honorable Robert E. Hauberg,
United States Attorney,
Federal Building,
Jackson, Mississippi.

The Defendant, The State of Mississippi, propounds the following Interrogatories to Plaintiff, The United States of America, pursuant to Rule 33 of the Federal Rules of Civil Procedure:

1. What is the entire factual basis for the assertion contained in Paragraph 15 of the Complaint that at the time of [fol. 565] the adoption of the Mississippi Constitution of 1890 there were substantially more negro citizens than white citizens who possessed voter qualifications in Mississippi.

2. (a) On what specific facts do you base the assertion contained in Paragraph 16 of the Complaint that one of the chief purposes of the Mississippi Constitution of 1890 was to restrict the negro franchise and/or to establish and perpetuate white political supremacy and racial segregation in Mississippi.

(b) State the name and official capacity, if any, of each person who you claim was motivated by this purpose and the specific manner or means by which such purpose was executed or put into effect.

3. Define with clarity and specificity your meaning or meanings of the phrase "white political supremacy" as used in Paragraphs number 16, 19, 21, 42 (c) and 53 (b) of the Complaint.

4. (a) State with particularity the full factual basis for the assertion contained in Paragraph 17 of the Complaint, that Section 244 of the Mississippi Constitution of 1890 was designed to accomplish the purpose of restricting the negro franchise and establishing and perpetuating white political supremacy and racial segregation and Mississippi.

(b) State the name and official capacity, if any, of each person you claim designed Section 244 of the Mississippi Constitution of 1890 to accomplish the purpose of restricting the negro franchise and establishing and perpetuating white political supremacy and racial segregation in Missis-
[fol. 566] sippi.

(c) State with specificity the particular means or manner by which this design was accomplished or put into effect.

5. (a) State with particularity every fact known to you which supports the assertion contained in Paragraph 19 of the Complaint that since the adoption of the Mississippi Constitution of 1890 the State of Mississippi by law, practice, custom, and usage has maintained and promoted white political supremacy and a racially segregated society.

(b) State the name and official capacity, if any, of each person who you claim has aided, abetted and furthered the maintenance and promotion of white political supremacy, and state the specific manner or means whereby such aid was effected.

(c) State the name and official capacity, if any, of each person who you claim has aided, abetted and furthered a racially segregated society in Mississippi, and the specific manner or means by which such aid was effected.

(d) By what acts or actions is this Defendant, the State of Mississippi, as distinguished from any other Defendants, alleged to be maintaining and/or promoting white political supremacy and a racially segregated society in Mississippi?

6. State with particularity the entire factual basis for the assertion contained in Paragraph 20 of the Complaint that by 1899, approximately 122,000 or 82% of the white males of voting age and 18,000 or 9% of the negro males of voting
[fol. 567] age were registered to vote in Mississippi,

and that since 1899, a substantial majority of white persons reaching voting age in Mississippi have become registered voters, and that the percentage of negroes registered to vote has declined.

7. (a) State with specificity and particularity the entire factual basis for the assertion and allegations made in Paragraph 21 of the Complaint.

(b) State any other methods, if any, by which you claim white political supremacy in Mississippi was maintained and promoted other than those embraced in subparagraphs (a), (b), and (c) of Paragraph 21.

(c) State the name and address of each negro who you claim was not allowed to register to vote as charged by subparagraph (a), of said Paragraph 21.

(d) State the name and address and official capacity, if any, of each person who you claim refused to allow each of said negroes to register to vote.

(d) State the factual circumstances surrounding each alleged instance of such alleged refusal to allow said negroes to register, including but not limited to the specific methods or means allegedly employed to deny or refuse said negroes the right to register.

(f) State the name and address of each literate negro who you claim was required to interpret sections of the Mississippi Constitution as charged by subparagraph (b) of Paragraph 21 of the Complaint.

(g) State the name and address and official capacity, if any, of each person who you claim compelled each liter- [fol. 568] ate negro to interpret sections of the Mississippi Constitution.

(h) State the name and address of each negro who you claim was excluded from Democratic primary elections as charged in subparagraph (c) of Paragraph 21 of the Complaint.

(i) State the name and address and official capacity, if any, of each person who excluded each negro from said Democratic primary elections.

(j) State with particularity and specificity the factual circumstances surrounding each alleged incident of negroes being excluded from said primary elections, including the specific manner or means by which said exclusion occurred.

(k) Describe with particularity each alleged instance of this Defendant, the State of Mississippi, as distinguished from any and all other Defendants, performing or committing any of the acts or practices charged in subparagraphs (a); (b) or (c) of Paragraph 21 of the Compalint.

8. State with particularity the factual basis of the assertion contained in Paragraph 23 of the Complaint that by 1951, a much higher percentage of the negroes of voting age in Mississippi were literate than in 1890.

9. State with particularity the factual basis for the assertion contained in Paragraph 26 of the Complaint that in 1954, at least 45,000 or 63% of the white persons of voting age in Mississippi were registered to vote and that in that same year approximately 22,000 or 5% of the negroes of voting age in Mississippi were registered to vote.

[fol. 569] 10. (a) State the entire factual basis known to you for the assertion contained in Paragraph 27 of the Complaint that the proposed Amendment to Section 244 of the Mississippi Constitution of 1890 was designed to perpetuate in Mississippi "white political supremacy," a racially segregated society, and the disfranchisement of negroes.

(b) State the name and address and official capacity, if any, of each person who you claim designed the proposed Amendment to Section 244 for the purpose of perpetuating in Mississippi "white political supremacy," a racially segregated society, and the disfranchisement of negroes.

(c) State with particularity the specific manner or means by which such design was executed or put into effect.

(d) State the name and address of each person you plan to call as a witness or otherwise use on the trial of this cause, to prove the allegations of Paragraph 27 of the Complaint.

(e) Describe each specific document which you intend to use to prove the allegations of said Paragraph 27.

11. (a) State the entire factual basis for the assertion contained in Paragraph 31 of the Complaint that public education facilities provided for negroes in Mississippi were and are inferior to those provided for white persons.

(b) State the name and address of each person you in-

[fol. 570] tend to call as a witness or otherwise use at

the trial of this cause to show that said public education facilities provided for negroes in Mississippi were and are inferior to those provided for white persons.

(c) State the specific documents, if any, you plan to use to prove this allegation.

12. (a) What do you intend to assert by the allegations of Paragraph 35 of the Complaint to charge that the effect of the Amendment to Section 244 of the Mississippi Constitution as to the comparative effect of such requirements for registration on negro citizens of voting age in Mississippi and white citizens of voting age?

(b) State every fact which you rely on to support such assertion, and the name and address of each person you intend to call as a witness or otherwise use on the hearing of this cause to prove such assertion.

13. (a) State the entire factual basis for the assertion contained in Paragraph 37 of the Complaint that in 1960 approximately 500,000 or 67% of the white persons of voting age in Mississippi, and approximately 20,000 to 25,000, or 5% of the negroes of voting age were registered to vote.

(b) Describe with specificity and by individual designation any documents, you plan to use on the trial of this cause to prove this allegation.

14. (a) State the factual basis for the assertion contained in Paragraph 41 of the Complaint as amended that this Defendant and its alleged agents and officials have used, are using, and will continue to use the interpretation [fol. 571] test and the duties and obligations test to deprive otherwise qualified negro citizens of the right to register to vote without distinction of race or color, and such deprivations, occurring by the adoption, use and threat of use of said tests, have been and are pursuant to a pattern and practice of racial discrimination.

(b) State individually, not collectively, the name, address, and official capacity of each of the alleged agents and officials of this Defendant who have committed the acts charged by the above cited portion of Paragraph 41 of the Complaint.

(c) State with particularity the factual circumstances surrounding each alleged instance of this Defendant or its

alleged agents and officials using the interpretation test and/or the duties and obligations test to deprive otherwise qualified negro citizens of the right to register to vote without distinction or discrimination because of race or color.

(d) State the name, address, and literacy level of each "otherwise qualified negro citizen" of the State of Mississippi, individually, not collectively, by County, against whom you charge this Defendant has committed all or any of the above mentioned deprivations.

(e) State the factual basis for the assertion contained in Paragraph 41 as amended of the Complaint that the above mentioned alleged deprivations have been and/or are pursuant to a pattern and practice of racial discrimination.

(f) State with particularity each and every instance of deprivations allegedly committed by this Defendant relied [fol. 572] upon by you in charging this Defendant with a "pattern and practice of racial discriminations," including the name, address and literacy level of each negro citizen of the State of Mississippi against whom you charge this Defendant has committed the above mentioned deprivations pursuant to a pattern and practice of racial discrimination.

(g) State the County within which each said instance of racial discrimination purusant to a pattern or practice committed by this Defendant occurred; the name or names of the person or persons who allegedly effected or caused such deprivations, the precise nature of the deprivations, and the name and address of any other persons known to you to have been present on such occasions.

(h) State with particularity the factual basis for the assertion contained in Paragraph 41 of the Complaint as amended that the existence of the interpretation test and the duties and obligations test as voter qualifications in Mississippi, their enforcement, and the threat of their enforcement, have deterred, are deterring and/or will continue to deter otherwise qualified negroes in Mississippi from applying for registration to vote.

(i) State with factual particularity each alleged instance of otherwise qualified negroes in the State of Mississippi having been deterred from applying for registration to vote by the existence of the interpretation test.

(j) State the name, address, age, literacy level, and length of residence within the County and State, of each negro citizen of the State of Mississippi who you claim has [fol. 573] been so deterred by the existence of the interpretation test, and also state the date and place where each said act of determent occurred.

(k) State with factual particularity each alleged instance of otherwise qualified negroes in the State of Mississippi having been deterred from applying for registration to vote by the existence of the duties and obligations test.

(l) State the name, address, age, literacy level, and length of residence within the County and State, of each negro citizen of the State of Mississippi who you claim has been so deterred by the existence of the duties and obligations test, and state the County within which each said act of determent occurred.

15. State every known factual basis for the assertion contained in Paragraph 50 of the Complaint that the purpose and the effect of the good moral character requirement were and/or are to subject the vast majority of negro citizens of voting age in Mississippi to this requirement when they attempt to become registered voters and to exempt the majority of the white citizens of voting age in Mississippi from this requirement and to provide an additional device with which registrars could discriminate against negro citizens who seek to register to vote—a means of discrimination which would make detection more difficult, including but not limited to the following:

(a) Every known factual basis for the assertion that the purpose of H. B. 899, Reg. Sess. 1962 was to achieve the [fol. 574] was to achieve the ends set out in subparagraphs (a) and (b) of Paragraph 50.

(b) The name and address of each person, who you intend to call as a witness or otherwise use at the hearing of this cause to prove that such was the purpose of Section 241-A.

(c) Every known factual basis for the assertion that the purpose of H. B. 899, Reb. Sess. 1962 was to achieve the ends out in subparagraphs (a) and (b) of Paragraph 50.

(d) The name and address of each person who you intend to call as a witness or otherwise use at the hearing of this cause to prove that such was the purpose of H. B. 899.

(e) Every known factual basis for the assertion that the purpose of H. B. 905, Reg. Sess. 1962 was to achieve the ends set out in subparagraphs (a) and (b) of Paragraph 50.

(f) The name and address of each person who you intend to call as a witness or otherwise use at the hearing of this cause to prove that such was the purpose of H. B. 905.

(g) Every known factual basis for the assertion that the purpose of H. B. 822, Reg. Sess. 1962 was to achieve the ends set out in subparagraphs (a) and (b) of Paragraph 50.

(h) The name and address of each person who you intend to call as a witness of otherwise use at the hearing of this cause to prove that such was the purpose of H. B. 822.

[fol. 575] (i) Factual basis for the assertion that the purpose of H. B. 904, Reg. Sess. 1962 was to achieve the ends set out in subparagraphs (a) and (b) of Paragraph 50.

(j) The name and address of each person who you intend to call as a witness or otherwise use at the hearing of this cause to prove that such was the purpose of H. B. 904.

16. (a1) State with particularity the factual basis for the assertion made in Paragraph 52 of the Complaint as amended that the existence of the good moral character qualification in Mississippi, its enforcement and/or the threat of its enforcemnt, have deterred qualified negro citizens in Mississippi from applying to register to vote.

(a2) State the name, address, age, literacy level and length of residence within the County and State, of each negro citizen of the State of Mississippi who you claim has been so deterred by the existence, enforcement or threat of enforcement, of the good moral character qualification.

(a3) State the name, address, age, literacy level and length of residence within the County and State, of each negro citizen of the State of Mississippi who you claim is being deterred by the existence, enforcement or threat of enforcement, of the good moral character qualification.

(b1) State the factual basis for the assertion made in Paragraph 52 of the Complaint as amended that the threatened use and the use by the Defendant registrars of voters, [fol. 576] and this Defendant and its agents and officials, of the character requirement, deprive and/or will deprive

otherwise qualified negro citizens of the right to register to vote without distinction of race or color, and/or that such deprivations, occurring by the adoption, use and/or threat of use, of the character requirement, have been and are pursuant to a pattern and practice of racial discrimination.

(b2) State each individual act which constitutes "a pattern and practice of racial discrimination" with which you seek to charge this Defendant as alleged in Paragraph 52 of the Complaint as amended.

(b3) State the name, address, age, literacy level, and length of residence in the State and County of each negro, individually, otherwise qualified to register to vote who you claim has been deprived of the right to register to vote by this Defendant, or its alleged agent or officials, by the use and/or threatened use of the character requirement.

(b4) State the name or names of the person or persons who allegedly effected or committed such deprivations, the precise nature of the deprivations and the name and address of any other person known to you to have been present on such occasions.

(b5) State the name and address of each of the alleged agents and officials of this Defendant who allegedly committed such deprivations pursuant to a pattern and practice of racial discrimination.

[fol. 577] (b6) State the name and address of each of the otherwise qualified negro citizens against whom said deprivations were committed, the date of said alleged deprivations, the nature of the deprivations in each case, and all other pertinent information necessary to enable Defendant to make a thorough investigation regarding each alleged instance of said deprivations.

(b7) State the name, and address, by County, of each negro citizen of the State of Mississippi as to whom you claim the good moral character requirement has been improperly or discriminatorily applied and the name of each person so applying said requirement to each of said negro citizens, and the date and circumstances of each such application of said good moral character requirement to each of said negro citizens of the State of Mississippi.

17. (a) State the factual basis for the assertion contained in Paragraph 59 of the Complaint as amended that the pur-

pose and/or effect of section 3209.6, as amended, of the Mississippi Code, was to frustrate federal protection in Mississippi of the right of citizens to vote without distinction or discrimination on account of race, and/or to facilitate discrimination by County Registrars against negroes seeking to register to vote.

(b) State the name, address, and official capacity, if any, of each individual person you claim was motivated, in enacting the above mentioned legislation, by a purpose to frustrate federal protection in Mississippi of the right [fol. 578] of citizens to vote without distinction or discrimination based solely on race, and/or to facilitate discrimination by County Registrars against negroes seeking to vote, and state with particularity the specific manner or means by which such purpose was put into effect.

(c) State the name and address of each person you plan to call as a witness or otherwise use on the trial of this cause to prove the above mentioned allegations of Paragraph 59, as amended, of the Complaint.

(d) Describe the specific documents which you intend to use to prove the allegations of said Paragraph 59.

(e) State with particularity the full factual basis for the assertion contained in Paragraph 59 of the Complaint, as amended, that the above mentioned statute is an integral part of any pattern and/or practice of racial discrimination of the Defendant as alleged in the Complaint.

(f) State the name and address of each person you plan to call as a witness or otherwise use on the trial of this cause, if any, to prove the allegations of Paragraph 59 of the Complaint, as amended, referred to in subparagraph (e) above.

(g) Describe the specific documents, if any, which you intend to use to prove the above mentioned allegations of said Paragraph 59.

18. State all facts upon which you will rely to prove the assertion contained in Paragraph 66 of the Complaint that the purpose and effect of each of the following Acts of the Legislature of Mississippi or any one or combination of them is to deter, hinder, prevent, delay and harass ne- [fol. 579] groes and/or to make it more difficult for negroes in their efforts to become registered voters, to fa-

cilitate discrimination against negroes, and/or to make it more difficult for the United States to protect the right of all its citizens to vote without distinction or discrimination based on race or color:

H. B. 900, Reg. Sess., 1962
H. B. 901, Reg. Sess., 1962
H. B. 900 Reg. Sess., 1962
H. B. 905, Reg. Sess., 1962
H. B. 822, Reg. Sess., 1962
H. B. 904, Reg. Sess., 1962
H. B. 903, Reg. Sess., 1962

Including but not limited to the following specific information:

(a) The full factual basis for your assertion that the purpose of each of these Acts is to accomplish the ends of above stated, State the name, address, and official capacity of each person known to you to have been motivated, in the enactment of each of these Acts of the Legislature, by said purpose.

(b) The specific manner or means by which said purpose was executed or put into effect.

(c) The name and address of each person you plan to call as a witness or otherwise use on the trial of this cause to prove the above mentioned allegations of Paragraph 66 of the Complaint.

(d) Describe the specific documents, which you intend to use to prove the allegations of said Paragraph 66.

[fol. 580] (e) The name, address, age, literacy level, and length of residence in the County and State of each negro citizen of the State of Mississippi, individually, by County, who has been deterred from registering to vote because of the existence or operation of said H. B. 900, Reg. Sess., 1962.

(f) The name, address, age, literacy level, and length of residence in the County and State of each negro citizen of the State of Mississippi, individually, by County, who was hindered from registering to vote because of the existence or operation of said H. B. 900, Reg. Sess., 1962.

(g) The name, address, age, literacy level, and length of residence in the County and State of each negro citizen

of the State of Mississippi, individually, by County, who was prevented from registering to vote because of the existence or operation of said H. B. 900, Reg. Sess., 1962.

(h) The name, address, age, literacy level, and length of residence in the County and State of each negro citizen of the State of Mississippi, individually, by County, who was delayed in registering to vote because of the existence or operation of Said H. B. 900, Reg. Sess., 1962.

(i) The name, address, age, literacy level, and length of residence in the County and State of each negro citizen of the State of Mississippi, individually, by County, who was harassed in connection with registering to vote because of the existence or operation of said H. B. 900, Reg. Sess., 1962.

[fol. 581] (j) The name, address, age, literacy level, and length of residence in the County and State of each negro citizen of the State of Mississippi, individually, by County, for whom it was made more difficult in his or her efforts to become a registered voter because of the existence or operation of said H. B. 900, Reg. Sess., 1962.

(k) The name, address, age, literacy level, and length of residence in the County and State of each negro citizen of the State of Mississippi, individually, by County, who has been deterred from registering to vote because of the existence or operation of said H. B. 901, Reg. Sess., 1962.

(l) The name, address, age. literacy level, and length of residence in the County and State of each negro citizen of the State of Mississippi, individually, by County, who was hindered from registering to vote because of the existence or operation of said H. B. 901, Reg. Sess., 1962.

(m) The name, address age, literacy level, and length of residence in the County and State of each negro citizen of the State of Mississippi, individually, by County, who was prevented from registering to vote because of the existence or operation of said H. B. 901, Reg. Sess., 1962.

(*m*) The name, address, age, literacy level, and length of residence in the County and State of each negro citizen of the State of Mississippi, individually, by County, who was delayed in registering to vote because of the existence or operation of said H. B. 901, Reg. Sess., 1962.

[fol. 582] (o) The name, address, age, literacy level, and length of residence in the County and State of each ne-

gro citizen of the State of Mississippi, individually, by County, who was harassed in connection with registering to vote because of the existence or operation of said H. B. 901, Reg. Sess., 1962.

(p) The name, address, age, literacy level, and length of residence in the County and State of each negro citizen of the State of Mississippi, individually, by County, for whom it was made more difficult in his or her efforts to become a registered voter because of the existence or operation of said H. B. 901, Reg. Sess., 1962.

(q) The name, address, age, literacy level, and length of residence in the County and State of each negro citizen of the State of Mississippi, individually, by County, who has been deterred from registering to vote because of the existence or operation of said H. B. 905, Reg. Sess., 1962.

(r) The name, address, age, literacy level, and length of residence in the County and State of each negro citizen of the State of Mississippi, individually, by County, who was hindered from registering to vote because of the existence or operation of said H. B. 905, Reg. Sess., 1962.

(s) The name, address, age, literacy level, and length of residence in the County and State of each negro citizen of the State of Mississippi, individually, by County, who [fol. 583] was prevented from registering to vote because of the existence or operation of said H. B. 905, Reg. Sess., 1962.

(t) The name, address, age, literacy level, and length of residence in the County and State of each negro citizen of the State of Mississippi, individually, by County, who was delayed from registering to vote because of the existence or operation of said H. B. 905, Reg. Sess., 1962

(u) The name, address, age, literacy level, and length of residence in the County and State of each negro citizen of the State of Mississippi, individually, by County, who was harassed in connection with registering to vote because of the existence or operation of said H. B. 905, Reg. Sess, 1962.

(v) The name, address, age, literacy level, and length of residence in the County and State of each negro citizen of the State of Mississippi, individually, by County, for whom it was made more difficult in his or her efforts to become a registered voter because of the existence or operation of said H. B. 905, Reg. Sess., 1962.

(w) The name, address, age, literacy level, and length of residence in the County and State of each negro citizen of the State of Mississippi, individually, by County, who has been deterred from registering to vote because of the existence or operation of said H. B. 822, Reg. Sess., 1962.

(x) The name, address, age, literacy level, and length of residence in the County and State of each negro citizen of the State of Mississippi, individually, by County, who [fol. 584] was hindered from registering to vote because of the existence or operation of said H. B. 822, Reg. Sess., 1962.

(y) The name, address, age, literacy level, and length of residence in the County and State of each negro citizen of the State of Mississippi, individually, by County, who was prevented from registering to vote because of the existence or operation of said H. B. 822, Reg. Sess., 1962.

(z) The name, address, age, literacy level, and length of residence in the County and State of each negro citizen of the State of Mississippi, individually, by County, who was delayed from registering to vote because of the existence or operation of said H. B. 822, Reg. Sess., 1962.

(aa) The name, address, age, literacy level, and length of residence in the County and State of each negro citizen of the State of Mississippi, individually, by County, who was harassed in connection with registering to vote because of the existence or operation of said H. B. 822, Reg. Sess., 1962.

(bb) The name, address, age, literacy level, and length of residence in the County and State of each negro citizen of the State of Mississippi, individually, by County, for whom it was made more difficult in his or her efforts to become a registered voter because of the existence or operation of said H. B. 822, Reg. Sess., 1962.

(cc) The name, address, age, literacy level, and length of residence in the County and State of each negro citizen [fol. 585] of the State of Mississippi, individually, by County, who has been deterred from registering to vote because of the existence or operation of said H. B. 904, Reg. Sess., 1962.

(dd) The name, address, age, literacy level, and length of residence in the County and State of each negro citizen

of the State of Mississippi, individually, by County, who was hindered from registering to vote because of the existence or operation of said H. B. 904, Reg. Sess., 1962.

(ee) The name, address, age, literacy level, and length of residence in the County and State of each negro citizen o fthe State of Mississippi, individually, by County, who was prevented from registering to vote because of the existence or operation of said H. B. 904, Reg. Sess., 1962.

(ff) The name, address, age, literacy level, and length of residence in the County and State of each negro citizen of the State of Mississippi, individually, by County, who was delayed from registering to vote because of the existence or operation of said H. . 904, Reg. Sess., 1962.

(gg) The name, address, age, literacy level, and length of residence in the County and State of each negro citizen of the State of Mississippi, individually, by County, who was harassed in connection with registering to vote because of the existence or operation of said H. B. 904, Reg. Sess., 1962.

(hh) The name, address, age, literacy level, and length of residence in the County and State of each negro citizen [fol. 586] of the State of Mississippi, individually, by County, for whom it was made more difficult for in his or her efforts to become a registered voter because of the existence or operation of said H. b. 904, Reb. Sess., 1962.

(ii) The name, address, age, literacy level, and length of residence in the County and State of each negro citizen of the State of Mississippi, individually, by County, who has been deterred from registering to vote because of the existence or operation of said H. B. 904, Reb. Sess., 1962.

(jj) The name, address, age, literacy level, and length of residence in the County and State of each negro citizen of the State of Mississippi, individually, by County, who was hindered from registering to vote because of the existence or operation of said H. B. 903, Reg. Sess., 1962.

(kk) The name, address, age, literacy level, and length of residence in the County and State of each negro citizen of the State of Mississippi, individually, by County, who was prevented from registering to vote because of the existence or operation of said H. B. 903, Reg. Sess., 1962.

(ll) The name, address, age, literacy level, and length of residence in the County and State of each negro citizen

of the State of Mississippi, individually, by County, who was delayed from registering to vote because of the existence or operation of said H. B. 903, Reg. Sess., 1962.

(mm) The name, address, age, literacy level, and length of residence in the County and State of each negro citizen [fol. 587] of the State of Mississippi, individually, by County, who was harassed from registering to vote because of the existence or operation of said H. B. 903, Reg. Sess., 1962.

(nn) The name, address, age, literacy level, and length of residence in the County and State of each negro citizen of the State of Mississippi, individually, by County, for whom it was made more difficult in his or her efforts to become a registered voter because of the existence or operation of said H. B. 903, Reg. Sess., 1962.

(oo) The name and address of each person you plan to call as a witness or otherwise use on the trial of this cause to prove the allegations of Paragraph 66 of the Complaint.

(pp) Describe the specific documents while you intend to use to prove the allegations of said Paragraph 66.

19. a() What facts form the basis for the assertion contained in Paragraph 69 of the Complaint, as amended, that this Defendant, the State of Mississippi, as distinguished from each and all of the other Defendants, has applied the requirements for registration to vote mentioned in Paragraphs 66 and 69 of the Complaint?

(b) What is the entire basis in fact upon which you intend to rely to prove the assertion contained in Paragarph 69 of the Complaint, as amended, that the existence and use of these requirements, the enforcement and the threat of their enforcement have deterred,are deterring and will [fol. 588] continue to deter otherwise qualified negroes in Mississippi from applying to register to vote, and/or deprive and/or will deprive such negroes of the right to register to vote without distinction of race or color, and/or that such deprivations, occurring by the adoption, use and threat of use, of these requirements have been and are pursuant to a pattern and practice of racial discrimination?

(c) State the name, address, age, literacy level, and length of residence in the County and State of each of the otherwise qualified negro citizens of the State of Mississippi, individually, by County, who have been deterred

from applying to register to vote by the existence and use of each of the following Acts of the Legislature of Mississippi:

H. B. 900, Reg. Sess., 1962
H. B. 901, Reg. Sess., 1962
H. B. 905, Reg. Sess., 1962
H. B. 822, Reg. Sess., 1962
H. B. 904, Reg. Sess., 1962
H. B. 903, Reg. Sess., 1962

(d) State the name, address, age, literacy level, and length of residence in the County and State of each of the otherwise qualified negro citizens of the State of Mississippi, individually, by County, who is being deterred from applying to register to vote by the existence and use of each of the following Acts of the Legislature of Mississippi:

H. B. 900, Reg. Sess., 1962
[fol. 589] H. B. 901, Reg. Sess., 1962
H. B. 905, Reg. Sess., 1962
H. B. 822, Reg. Sess., 1962
H. B. 904, Reg. Sess., 1962
H. B. 903, Reg. Sess., 1962

(e) State the name, address, age, literacy level and length of residence in the County and State of each of the otherwise qualified negro citizens of the State of Mississippi, individually, by County, who is being deprived of the right to register to vote without distinction of race or color because of the use and threat of use of eachof the following Acts of the Legislature of Mississippi:

H. B. 900, Reg. Sess., 1962
H. B. 901, Reg. Sess., 1962
H. B. 905, Reg. Sess., 1962
H. B. 822, Reg. Sess., 1962
H. B. 904, Reg. Sess., 1962
H. B. 903, Reg. Sess., 1962

(f) State with particularity each of the alleged Acts of discrimination which you claim constitutes "a pattern and practice of racial discrimination" as charged by Paragraph 69 of the Complaint, as amended, and state the

name, address, age, literacy level, and length of residence in the County and State of each of the otherwise qualified negro citizens of the State of Mississippi, individually, by County, against whom you claim such deprivations constituting "a pattern and practice of racial discrimination" has been committed.

[fol. 590] (g) State the name, address, and official capacity, if any of each person who allegedly committed each said individual deprivation which you claim constitutes a "pattern and practice of racial discrimination" as charged by Paragraph 69 of the Complaint, as amended.

20. (a) Do you intend to charge by the Complaint that there are negro citizens of the State of Mississippi who have been deterred, from applying to register to vote because of the treatment accorded some friend or acquaintance of such negro citizens in the effort or efforts of such friend or acquaintance to register to vote?

(b) If your response is in the affirmative, state the name, age, address, literacy level and length of residence in the County and State of each such negro, individually, who was allegedly deterred from applying to register to vote because of some treatment accorded a friend or acquaintance.

(c) State the name, age, address, literacy level and length of residence in the County and State of each such friend or acquaintance whose experiences while attempting to register to vote deterred each of said negro citizens of the State of Mississippi, respectively, and the name, address, and official capacity, if any, of each person who accorded such treatment to said friend or acquaintance of said negro citizens.

21. State the name and address of each person you intend to call as a witness at the hearing or trial of this cause, and state what you intend to prove by each such witness, [fol. 591] except to the extent that this information may have been previously elicited by the foregoing interrogatories.

22. State the name and address of each and every agent of the Federal Bureau of Investigation and each and every other agent, attorney or employee, of the Plaintiff, the United States of America, who has interviewed any person

with reference to this cause, or who has taken, or who is in possession of, any memoranda, or any statement, whether written or otherwise, made by any person with reference to, or having any connection with, this cause. Also, state the name and address of the custodian, of each of said reports of interview, memoranda, or any other statements, whether written or otherwise, made with reference to this cause.

23. State the name, age, race and address of each and every person who has been interviewed by any agent of the Federal Bureau of Investigation or any other agent, attorney, or employee of the Plaintiff, the United States of America, relative to this cause.

24. State the name, race and address of each and every person who has given or furnished any statement or statements, written or oral, signed or unsigned, to any agent, attorney, or employee of Plaintiff, the United States of America, relative to or having any connection with this cause. In answering this interrogatory, state which of these persons, if any, gave written statements; which of these persons, if any, gave oral stateemnts; and state which of these persons, if any, who gave written statements signed such statements.

[fols. 592-593] 25. Are you willing to treat these interrogatories as continuing interrogatories, and to make further answer to each of them within fifteen days after you receive any additional information requested by the foregoing interrogatories?

The State of Mississippi, By: Joe T. Patterson, Attorney General of the State of Mississippi. Will S. Wells, Dugas Shands, Guy N. Rogers and William A. Allain, Assistant Attorneys General of the State of Mississippi. Peter M. Stockett, Jr., Darryl A. Hurt and Charles Clark, Special Assistant Attorneys General of the State of Mississippi New State Capitol Jackson, Mississippi. By: Charles Clark.

Certificate of service [omitted in printing.]

[fol. 594] [File Endorsement Omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3312

[Title Omitted]

NOTICE OF AND MOTION FOR ENLARGEMENT OF TIME WITHIN WHICH TO FILE ANSWERS TO INTERROGATORIES, TIME HAVING EXPIRED—Filed June 4, 1963.

To Honorable Charles Clark, Attorney of Record for the Defendant State of Mississippi;

Please take notice that the plaintiff will move the District Court for the Southern District of Mississippi at 9:00 o'clock A.M., June 10, 1963, or as soon thereafter as counsel can be heard, at the Court Room, Federal Court House, in Jackson, Mississippi, for an order enlarging the time within which to file answers to a list of twenty five (25) interrogatories propounded by the defendant State of Mississippi, time having expired.

The defendant State of Mississippi filed on May 17, 1963 voluminous and comprehensive interrogatories seeking to determine the factual basis for the allegations in plaintiff's complaint. These interrogatories were personally served on the United States Attorney in Jackson, Mississippi on May 17, 1963. A copy was received by the Department of Justice in Washington, D. C. on May 20, 1963 and by the Civil Rights Division which is responsible for the preparation of answers to such interrogatories on May 22, 1963. Answering these interrogatories involve setting out in great detail the preparation of plaintiff's case, including the preparation and analysis of hundreds of registration records. Such preparation for plaintiff's case and the preparation for answers to the defendant's interrogatories [fols. 595-598] is in progress but cannot be completed for thirty (30) days. Plaintiff therefore moves the Court

for an extension of time to answer the interrogatories to and including July 5, 1963.

Robert E. Hauberg United States Attorney D. Robert Owen, Attorney By R.I.H. Department of Justice.

Certificate of Service [omitted in printing]

[fol. 599] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI SOUTHERN DIVISION

Civil Action No. 3,312

[Title omitted]

INTERROGATORIES OF J. W. SMITH—Filed June 7, 1963

To: The United States of America, Plaintiff.
Honorable Robert E. Hauberg,
United States Attorney,
Federal Building,
Jackson, Mississippi.

The defendant, J. W. Smith, Circuit Court Clerk and Registrar of Coahoma County, Mississippi, requests the above named plaintiff, the United States of America, by anofficer or agent thereof, to answer under oath, in accordance with Rule 33 of the Federal Rules of Civil Procedure, the following interrogatories:

(1) State the factual basis for the assertion contained in Paragraph 12 of the Complaint concerning voting age population of Negro and white persons, and the approximate voter registration of each in Coahoma County, Mississippi. In answer to this interrogatory please state with particularity that upon which this assertion is based.

(2) State with particularity the entire factual basis for

[fol. 600] the assertion and allegations made in Paragraph 21 of the Complaint insofar as the same pertain to the defendant, J. W. Smith, Registrar of Coahoma County, Mississippi.

(b) State the name and address of each negro of Coahoma County, Mississippi, who you claim was not allowed to register to vote as charged by sub-paragraph (a) of said Paragraph 21.

(c) State the name and address and official capacity, if any, of each person who you claim refused to allow each of said negroes to register to vote.

(d) State the factual circumstances surrounding each alleged instance of such alleged refusal to allow said negroes to register in Coahoma County, Mississippi, including but not limited to the specific methods or means allegedly employed to deny or refuse said negroes the right to register.

(e) State the name and address of each literate negro in Coahoma County, Mississippi, who you claim was required to interpret sections of the Mississippi Constitution as charged by sub-paragraph (b) of Paragraph 21 of the Complaint.

(f) State the name and address and official capacity, if any, of each person who you claim compelled each literate negro to interpret sections of the Mississippi Constitution.

(g) State the name and address of of each negro of Coahoma County, Mississippi, who you claim was excluded from Democratic Primary elections as charged in sub-paragraph (c) of Paragraph 21 of the Complaint.

(h) State the name, address and official capacity, if any, [fol. 601] of each person who excluded each negro from said Democratic Primary elections in Coahoma County, Mississippi.

(i) State with particularity and specificity the factual circumstances surrounding each alleged incident of negroes being excluded from said primary elections in Coahoma County, Mississippi, including the specific manner or means by which said exclusion occurred.

(j) State with particularity each alleged instance of the defendant J. W. Smith, as distinguished from any and all other defendants, performing or committing any of the acts or practices charged in sub-paragraph (a), (b) and (c) of Paragraph 21 of the Complaint.

(3) (a) State the factual basis for the assertion contained in Paragraph 41 of the Complaint as amended that this Defendant is using, and will continue to use the interpretation test and the duties and obligations test to deprive otherwise qualified negro citizens of the right to register to vote without distinction of race, or color, and such deprivations, occurring by the adoption, use and threat of use of said tests, have been and are pursuant to a pattern and practice of racial discrimination.

(b) State with particularity the factual circumstances surrounding each alleged instance of this Defendant using the interpretation test and/or the duties and obligations test to deprive otherwise qualified negro citizens of the right to register to vote without distinction or discrimination because of race or color.

(c) State the name, address, and literacy level of each "otherwise qualified negro citizen" of Coahoma County, Mississippi, individually, not collectively, against whom you charge this Defendant has committed all or any of [fol. 602] the above mentioned deprivations.

(d) State the factual basis for the assertion contained in Paragraph 41 as amended of the Complaint that the above mentioned alleged deprivations have been and/or are pursuant to a pattern and practice of racial discrimination.

(e) State with particularity each and every instance of deprivations allegedly committed by this Defendant relied upon by you in charging this Defendant with a "pattern and practice of racial discriminations," including the name, address and literacy level of each negro citizen of Coahoma County, Mississippi, against whom you charge this Defendant has committed the above mentioned deprivations pursuant to a pattern and practice of racial discrimination.

(f) State the place where each instance of racial discrimination pursuant to a pattern and practice committed by this Defendant occurred; the name or names of the person or persons who allegedly effected or caused such deprivations, the precise nature of the deprivations, and the name and address of any other persons known to you to have been present on such occasions.

(g) State with particularity the factual basis for the assertion contained in Paragraph 41 of the Complaint as amended that the existence of the interpretation test and

the duties and obligations test as voter qualifications in Mississippi, their enforcement, and the threat of their enforcement, have deterred, are deterring and/or will continue to deter otherwise qualified negroes in Coahoma County, Mississippi, from applying for registration to vote.

(h) State with factual particularity each alleged instance of otherwise qualified negroes in Coahoma County, Mississippi, having been deterred from applying for regis- [fol. 603] tration to vote by the existence of the interpretation test.

(i) State the name, address, age, literacy level, and length of residence within Coahoma County, Mississippi, of each Negro citizen who you claim has been so deterred by the existence of the interpretation test, and also state the date and place where each said act of determent occurred.

(j) State with factual particularity each alleged instance of otherwise qualified negroes in Coahoma County, Mississippi, having been deterred from applying for registration to vote by the existence of the duties and obligations test.

(k) State the name, address, age, literacy level, and length of residence within Coahoma County, Mississippi, of each negro citizen of Coahoma County, Mississippi, who you claim has been so deterred by the existence of the duties and obligations test.

(4) (a1) State with particularity the factual basis for the assertion made in Paragraph 52 of the Complaint as amended that the existence of the good moral character qualification in Mississippi, its enforcement and/or the threat of its enforcement, have deterred qualified negro citizens in Coahoma County, Mississippi, from applying to register to vote.

(a2) State the name, address, age, literacy level and length of residence within Coahoma County, Mississippi, of each negro citizen within said County who you claim has been so deterred by the existence, enforcement of threat of enforcement, of the good moral character qualification.

(a3) State the name, address, age, literacy level and length of residence within Coahoma County, Mississippi, of [fol. 604] each negro citizen of said County who you claim is being deterred by the existence, enforcement or threat of enforcement, of the good moral character qualification.

(b1) State the factual basis for the assertion made in

Paragraph 52 of the Complaint as amended that the threatened use and use by this Defendant of the character requirement, deprive and/or will deprive otherwise qualified Negro citizens of the right to register to vote without distinction of race or color, and/or that such deprivations, occurring by the adoption, use and/or threat of use, of the character requirement, have been and are pursuant to a pattern and practice of racial discrimination.

(b2) State each individual act which constitutes "a pattern and practice of racial discrimination" with which you seek to charge this Defendant as alleged in Paragraph 52 of the Complaint as amended.

(b3) State the name, address, age, literacy level, and length of residence in Coahoma County, Mississippi, of each negro, individually, otherwise qualified to register to vote who you claim has been deprived of the right to register to vote by this Defendant by the use and/or threatened use of the character requirement.

(b4) State the name or names of the person or persons who allegedly effected or committed such deprivations, the precise nature of the deprivations and the name and address of any other person known to you to have been present on such occasions.

(5) (a) Please state with particularity the factual basis for the assertion contained in paragraph 50 (b) of the complaint that this defendant has used the good moral char-
[fol. 605] acter requirement as "an additional device with which to discriminate against negro citizens who have sought to register to vote, in Coahoma County, Mississippi,

(b) Please give the name, age, occupation, address, length of residence in Coahoma County, Mississippi, and literacy level of each such Negro citizen alleged to have been discriminated against by this defendant by his use of such alleged device, the good moral character requirement.

(6) (a) State with particularity the factual basis for the assertion contained in Paragraph 60 of the Complaint to the effect that this Defendant or his alleged agents, unless restrained by order of this Court, will continue to destroy voter registration records in violation of the Constitution of the United States and the Civil Rights Act of 1960.

(b) In answer to this interrogatory state the name, age, race, occupation and address of each person, individually, whom you intend to call as a witness to substantiate the allegations contained in Paragraph 60 of the Complaint to to the effect that this Defendant or his alleged agents have destroyed or will continue to destroy voter registration records of Coahoma County, Mississippi, in violation of the Constitution of the United States and the Civil Rights Act of 1960, as well as the name, age, race, occupation and address of each and all other persons whom you presently believe or have reason to believe have knowledge of any such destruction or anticipated destruction of said records.

[fol. 606] (c) In answering this interrogatory, state with particularity what voter registration records, if any, under his care, custody and control which this Defendant is alleged to have heretofore destroyed in violation of the Constitution of the United States and the Civil Rights Act of 1960 as alleged in Paragraph 60 of the Complaint, stating specifically the type, style, name or nature of each such record destroyed, and the date, time, place and manner of its destruction, together with the name, age, race, occupation and address of all persons present at the time of such destruction.

(7) (a) State with particularity the factual basis for the assertions contained in Paragraphs 69 and 70 of the Complaint that "otherwise qualified" Negro citizens of the State of Mississippi have been, are now and will in the future be deterred from applying to register to vote, and will be deprived of their right to register to vote without distinction of race or color unless this Defendant and his alleged agents are restrained from enforcing "threatening" to enforce the registration requirements as described in Paragraph 66 of the Complaint, or because of the existence of said requirements.

(b) State the name, age, occupation and address of each "otherwise qualified" Negro citizen of Coahoma County, Mississippi, individually, who have been deterred, are now deterred and will in the future be deterred from applying to register to vote in Coahoma County, Mississippi, because of the existence of the registration requirements described in Paragraph 66 of the Complaint, or because of

the enforcement or "threat" of enforcement of the registration requirements described in Paragraph 66 of the Complaint by this Defendant; also, state separately the name, [fol. 607] occupation and address of each and all other "otherwise qualified" Negro citizens of Coahoma County, Mississippi, individually, not collectively, whom you presently believe or have reason to believe to have been deterred, are now deterred and will in the future be deterred from applying to register to vote in said County because of the existence of the registration requirements described in Paragraph 66 of the Complaint or the enforcement or "threat" of enforcement of the registration requirements described in Paragraph 66 of the complaint by this defendant.

(8) Please state the name, age, occupation, address, and literacy level of each Negro citizen, individually, not collectively, whom you claim has complied with all of the requirements of registering to vote in the State of Mississippi and who has been denied the right to register to vote on account of race or color by this Defendant or his alleged agents.

In answering this interrogatory, please state with particularity the facts surrounding each alleged incident of such denial, including the name, age, occupation, race and address of the person or persons who effected or committed such denial; the date, time, place and location of such denial; the specific nature of the denial, and the name, age, occupation, race and address of any other person or persons present when such denial allegedly occurred.

(9) State the name, age, occupation, address and literacy level of each Negro citizen of Coahoma County, Mississippi, individually, not collectively, whom you claim has been delayed, prevented, hindered, harassed or discour- [fol. 608] aged from applying to register to vote on account of race or color by this Defendant or his alleged agents.

In answering this interrogatory, state with particularity each and evey act or practice allegedly engaged in by this Defendant or his alleged agents, and the facts and circumstances surrounding each alleged incident, including, but not specifically limited to, the name or names of the person

or persons who effected, committed, or participated in such acts and practices; the date, time and place when and were each alleged act or practice was committed, executed or performed; and the name, age, occupation, race. and address of each and every person present when each such alleged act or practime was committed, executed or performed.

(10) (a) Please identify by name, address, race of applicant and serial number of application, if any, all of those written applications for voter registration accepted by defendant J. W. Smith as Registrar of Coahoma County, Mississippi, or his alleged agents, copies of which are in your possession, including those which you intend to use at the trial of this case, which may tend to prove any allegation of the complaint to the effect that this defendant has discriminated in any way for or against any otherwise qualified applicant for voter registration in Coahoma County, Mississippi, on account of his or her race or color.

(b) Please identify by name, address, race of applicant and serial number of application, if any, all of those written applications for voter registration rejected by the defendant J. W. Smith as Registrar of Coahoma County, Mississippi, or his alleged agents, copies of which are in your possession, including those which you intend to use [fol. 609] at the trial of this case, which may tend to prove any allegation of the complaint to the effect that this defendant has discriminated in any way for or against any otherwise qualified applicant for voter registration in Coahoma County, Mississippi, on account of his or her race or color.

(11) Please identify with particularity any entry, error or omission contained or found in any of the records other than voter registration applications, on file in the office of this defendant registrar, copies of which you intend to use in the trial of this case in support of any of the allegations contained in the complaint; also, please identify with particularity any and all other entries, errors or omission found or contained in any of said records which you claim have been improperly made or omitted by this defendant.

(12) State the name and address of each and every agent of the Federal Bureau of Investigation who has inter-

viewed any witnesses or who has taken, or is in possession of, any memoranda or any statements, whether written or otherwise, made by any person with reference to, or having any connection with, the registration of voters in Coahoma County, Mississippi, by this Defendant or his alleged agents.

(13) State the name, age, occupation, race and address of each and every person who has been interviewed by any agent or attorney of Plaintiff relative to the act sand practices of this Defendant or his alleged agents in the performance and discharge of his duties as Registrar of Voters of Coahoma County, Mississippi.

[fol. 610] (14) State the name, occupation, race and address of each and every person who has given or furnished any statement or statements, written or oral, signed or unsigned, to any agent or attorney for Plaintiff relative to or having any connection with the acts and practices of this defendant or his alleged agents in the performance and discharge of his duties as Registrar of Voters in Coahoma County, Mississippi. In answer to this interrogatory, state which of these persons, if any, gave written statements; which of these persons, if any, gave oral statements, and state which of these persons, if any, who gave written statements signed such statements.

(15) Give detailed summmary of each statement, written or oral, signed or unsigned, given by any person or any agent or attorney of Plaintiff, except any statement given any attorney of record for plaintiff, relative to or having any connection with the acts and practices of this defendant, or his alleged agents, in the performance and discharge of his duties as Registrar of Voters in Coahoma County, Mississippi; such summary to include, but not be specifically limited to: the name, age, occupation, race and address of the person making the statement; the date or dates on which said statement or statements were made; the name ofthe agent or attorney of Plaintiff who now has possession of such statement or statments, or memoranda evidencing the same.

(16) State the name, age, occupation, race and address of each person not previously listed or named in answering these interrogatories whom you intend to call as a witness against this Defendant on the hearing for Preliminary and

[fols. 611-615] Permanent Injunctions, and state with particularity what you intend to prove by each such witness.

(17) Are you willing to treat these Interrogatories as continuing interrogatories and to make further answer to each statement within fifteen (15) days after you receive any additional information requested by the foregoing interrogatories.

J. W. Smith, Circuit Court Clerk and Registrar of Coahoma County, Mississippi, Defendant. By: Leon L. Porter, Jr., Attorney at Law, Clarksdale, Mississippi. Semmes Luckett, Attorney at Law, Clarksdale, Mississippi. Chester H. Curtis, Attorney at Law, Clarksdale, Mississippi. Joe T. Patterson, Attorney General of the State of Mississippi, Jackson, Mississippi. By /s/ Leon L. Porter, Jr., one of the attorneys of record for defendant.

Certificate of service (omitted in printing.)

[fol. 616] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI JACKSON DIVISION

Civil Action No. 3312

[Title omitted]

ORDER ENLARGING TIME WITHIN WHICH TO FILE ANSWERS TO INTERROGATORIES—June 10, 1963

The Plaintiff, United States of America, having moved this Court for an enlargement of time—time having expired, to and including July 5, 1963, within which to file anwsers to interrogatories filed by the defendant State of Mississippi. Counsel having been heard, and it appearing that excusable neglect having been shown in that prepara-

tion of such answers is in progress but can not be completed until July 5, 1963 because of the length and complexity of such interrogatories, it is, therefore,

Ordered, that the Plaintiff, United States of America is hereby granted an enlargement of time within which to file answers to interrogatories propounded by the Defendant State of Mississippi through and including July 5, 1963.

Ordered, this 10th day of June A.D., 1963.

Harold Cox, United States District Judge.

[fol. 617] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI JACKSON DIVISION

Civil Action No. 3312

[Title omitted]

NOTICE OF HEARING AND OBJECTIONS TO A CERTAIN INTERROGATORY PROPOUNDED BY DEFENDANT J. W. SMITH—Filed June 17, 1963.

T. J. W. Smith and the attorneys of record for defendant Smith:

Please take notice that on July 12, 1963, at 9:00 A.M. or as soon thereafter as counsel can be heard at the courtroom of the United States District Court, Post Office Building, Jackson, Mississippi, the plaintiff, United States of America, will move the Court for an order limiting the scope of examination of plaintiff by disallowing a certain interrogatory heretofore served and propounded by defendant J. W. Smith.

Plaintiff objects to making a response to Interrogatory No. 15 propounded by J. W. Smith, requesting a detailed summary of each statement, written or oral, signed or unsigned, given by any person or agent or attorney of plaintiff except any statement given any attorney of record for plaintiff, relative to or having any connection with the [fol. 618] acts and practices of this defendant, or his al-

leged agents, in the performance and discharge of his duties as Registrar of Voters in Coahoma County, Mississippi, on the grounds that:

1. The requested information is part of the work product of plaintiff's attorneys;
2. Good cause has not been shown why the requested information should be provided;
3. The preparation of such detailed summaries is burdensom on the plaintiff and is not the proper subject of examination on written interrogatories.

John Doar, D. Robert Owen, Attorneys, Department of Justice.

[fols. 619-620] Certificate of Service omitted in printing.

[fol. 621] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI JACKSON DIVISION

Civil Action No. 3312

[Title omitted]

ORDER EXTENDING TIME WITHIN WHICH TO FILE ANSWERS TO INTERROGATORIES—June 17, 1963

The United States of America, plaintiff, having requested extension of time witin which to answer interrogatories propounded by defendant Smith and it appearing that said defendant has no objection to such extension, it is therefore

Ordered that the time for answering the interrogatories propounded to the plaintiff by defendant Smith is hereby enlarged to and including July 10, 1963.

Done this 17th day of June, 1963.

John Minor Wisdom, Circuit Judge.

[fol. 622] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI JACKSON DIVISION

Civil Action No. 3312

[Title omitted]

INTERROGATORIES OF THE DEFENDANT, MRS. PAULINE EASLEY, CIRCUIT CLERK AND REGISTRAR OF CLAIBORNE COUNTY—Filed June 21, 1963

To: The United States of America, Plaintiff.
Honorable Robert E. Hauberg,
United States Attorney,
Federal Building,
Jackson, Mississippi.

The Defendant, Mrs. Pauline Easley, Circuit Clerk and Registrar of Claiborne County, propounds the following Interrogatories to Plaintiff, the United States of America, pursuant to Rule 33 of the Federal Rules of Civil Procedure:

[fol. 623] 1. Please state the name and address of each negro citizen, individually, not collectively, and not by reference to any document, public or otherwise, who you claim has been denied the right to register to vote by this Defendent, or her alleged agents, by the operation of Section 244 of the Mississippi Constitution, prior to its amendment in the year 1955. In answering this interrogatory, please state with particularity the facts surrounding each alleged incident of such denial, inluding the name or names of the person or persons who effected or committed such denial, the date and location of such denial, the specific nature of the denial, and the names and addresses of any other persons present when such denial allegedly occurred.

2. Please state the name and address of each negro citizen, individually, and not collectively, and not by reference to any document, public or otherwise, who you claim has been denied the right to register to vote by this Defendant, or her alleged agents, by operation of Section 244 of the Mississippi Constitution, as it now exists. In

answering this interrogatory, please state with particularity the facts surrounding each alleged incident of such denial, including the name or names of the person or persons who effected or committed such denial, the date and location of such denial, the specific nature of the denial, and the names and addresses of any other persons present when such denial allegedly occurred.

3. Please state with particularity the factual basis of the allegation in Paragraph No. 41 of the Complaint, that this registrar is using "the interpretation test and the duties and obligations test" to deprive any negro citizen of the [fol. 624] right to register, when they are otherwise qualified. In answering this interrogatory, please state with particularity the facts which would show that the interpretation test or the duties and obligations test were satisfactorily answered by any reasonable standard, and that in their application they were discriminatory.

4. Please state with particularity the factual basis of the allegation in Paragraph No. 41 of the Complaint that the existence of the interpretation test and the duties and obligations test, and their enforcement and threat of enforcement are deterring any negro from applying for registration to vote. In answering this interrogatory, please state with particularity the facts as to whether any such negro who was deterred by these matters was of sufficient intelligence and educational background, that he could pass a resonable educational requirement test or intelligence test, this not to be by reference to the grade in school which he completed.

5. Please state the name and address of each negro citizen, individually, and not collectively, and not by reference to any document, public or otherwise, who you claim has been denied the right to register to vote by this Defendant, or her alleged agents, by the operation of Section 241-A of the Mississippi Constitution, as adopted in 1960. In answering this interrogatory, please state with particularity the facts surrounding each alleged incident of such denial, including the name or names of the person or persons who effected or committed such denial, the date and location of such denial, the specific nature of the denial, the specific nature of the denial, the names and addresses of any other persons present when such denial allegedly occurred.

6. Please state the names and addresses of each negro [fol. 625] citizen, individually, and not collectively, and not be reference to any document, public or otherwise, who you claim has been denied the right to register to vote by this Defendant, or her alleged agent, by the operation of House Bill 882 of the Regular Session of 1962. In answering this interrogatory, please state with particularity the facts surrounding each alleged incident of such denial, including the name or names of the person or persons who effected or committed such denial, the date and location of such denial, the specific nature of the denial, and the names and addresses of any other persons present when such denial allegedly occurred.

7. Please state the name and address of each negro citizen, individually, and not collectively, and not by reference to any document, public or otherwise, who you claim has been denied the right to register to vote by this Defendant, or her alleged agents, by the operation of House Bill 904 of the Regular Session of 1962. In answering this interrogatory, please state with particularity the facts of each alleged incident of such denial, including the name or names of the person or persons who effected or committed such denial, the date and location of such denial, the specific nature of the denial, and the names and addresses of any other persons present when such denial allegedly occurred.

8. Please state the name and address of each citizen, if any, individually, and not collectively, and not by reference to any document, public or otherwise, who you claim was assisted by this Defendant, or her alleged agents, in filling out the registration form with respect to his or her precinct, or as to where the applicant was to sign his or her name on the form. In answering this interrogatory, please state with particularity the facts surrounding each said in- [fol. 626] cident of assistance, including the name or names of the person or persons who effected or committed such assistance, the date and location of such assistance, the specific nature of the assistance, and the names and addresses of any other persons present when such assistance allegedly occurred.

9. Please state the name and address of each negro citizen, individually, and not collectively, and not by refer-

ence to any document, public or otherwise, who you claim has been denied the right to register to vote by this Defendant, or her alleged agents, by the operation of House Bill No. 900 of the Regular Session of 1962, amending Section 3213 of Mississippi Code of 1942. In answering this interrogatory, please state with particularity the facts surrounding each alleged incident of such denial, including the name or names of the person or persons who effected or committed such denial, the date and location of such denial, the specific nature of such denial, the names and addresses of any other persons present when such denial allegedly occurred.

10. Please state the name and address of each negro citizen, if any, individually, and not collectively, and not by reference to any document, public or otherwise, who you claim satisfactorily completed the registration form, at any time by this Defendant, and who requested an appeal from this administrative decision, as provided by state law, but was denied the right of appeal from the decision of this registrar. In answering this interrogatory, please state with particularity the facts surrounding each alleged incident of such denial, including the name or names of the person or persons who effected or committed such denial, the date and location of such denial, the specific nature [fol. 627] of the denial, the names and addresses of any other persons present when such denial allegedly occurred.

11. Please state the name and address of each citizen, individually and not collectively, if any, and not by reference to any document, public or otherwise, who has been denied by this registrar, or her alleged agent, or by her predecessors in office, the right to register, without any formality, in the new registration books of Claiborne County, which have been in use, commencing in 1956, if said person had been a registered voter listed on the registration books in effect prior to that date. In answering this interrogatory, please state the formalities they were required to go through with, including the taking of any new examination or test of any nature or kind, if any, and state with particularity all of the facts surrounding each alleged incident of such denial, including the name or names of the person or persons who effected or committed such denial, the date and location of such denial, the

specific nature of the denial, and the names and addresses of any other persons present when such denial allegedly occurred.

12. Please state the name and address of each and every agent of the Federal Bureau of Investigation who have interviewed any witnesses with reference to this cause, or who have taken, or who are in possession of, any statements, written or otherwise, made by any citizen of Claiborne County with reference to this cause.

13. (a) Please state the name and address of each white person resident of Claiborne County who has been interviewed by any agent or attorney of Plaintiff relative to this cause.

[fol. 628] (b) Please state the name and address of each negro person resident of Claiborne County who has been interviewed by any agent or attorney of Plaintiff relative to this cause.

(c) Please state the name and address of each white person resident of Claiborne County who has given or furnished a statement or statements, written or oral, signed or unsigned, to any agent or attorney of Plaintiff relative to this cause. Please state which of these persons, if any, gave written statements, and whether they were signed or not, and also which of these persons, if any, gave oral statements.

(d) Please state the name and address of each negro person resident of Claiborne County who has given or furnished a statement or statements, written or oral, signed or unsigned, to any agent or attorney of Plaintiff relative to this cause. Please state which of these persons, if any, gave written statements, and whether they were signed or not, and also which of these persons, if any, gave oral statements.

14. State the name and address of each negro citizen of Claiborne County, individually, and not collectively, and not by reference to name or names on list or lists of names appearing or contained in any book, paper, or other document, public or otherwise, whether or not in the possession of this Defendant, who you claim has been delayed, prevented, hindered, harassed or discouraged from applying to register to vote on account of race or color by this Defendant or her alleged agents.

In answering this interrogatory, state with particularity each and every act or practice allegedly engaged in by this Defendant or her alleged agents, and the facts and circumstances surrounding each alleged incident, including [fol. 629] but not specifically limited to, the name or names of the person or persons who effected, committed, or participated in such acts and practices; the date, time and place when and where each such alleged act or practice was committed, executed, or performed; and the name, age, occupation, race, and address of each and every person present when each such alleged act or practice was committed, executed, or performed.

15. State the name and address of each white citizen of Claiborne County, individually and not collectively, and not by reference to name or names or list or lists of names appearing or contained in any book, paper, or other document, public or otherwise, whether or not in the possession of this Defendant, whom you intend to call as a witness who have been afforded by this Defendant or her alleged agents opportunities to register to vote in Claiborne County, which opportunities have allegedly been denied by this Defendant or her alleged agents to negro applicants for registration in said county; also, state separately the name and address of each and all other white citizens of said county, individually, not collectively, and not by reference to name or names or list or lists of names appearing or contained in any book, paper, or other document, public or otherwise, whether or not in the possession of this Defendant, whom you presently believe or have reason to believe have been afforded opportunities to register to vote by this Defendant or his alleged agents, which opportunities have been denied to negro applicants for registration.

In answering this interrogatory, please state with particularity each incidence of this Defendant or her alleged agents affording white applicants opportunities to register to vote which this Defendant or her alleged agents [fol. 630] have allegedly denied negro applicants, including the name and address of each white person afforded such opportunity; the date and time of the occurrence of the affording of such white person or persons said opportunity; the nature of the opportunity afforded such

white persons which has allegedly been denied by this Defendant or her alleged agents to negro applicants for registration; the place of the occurrence of the affording of said opportunities to register to vote to said white persons; the name, age, occupation, race and address of all persons present on such occasions; the name, age, occupation and address of each negro citizen of Claiborne County who has allegedly been denied by this Defendant or her alleged agent such opportunities to register to vote in said county.

16. State the name and address of each white citizen of Claiborne County, individually and not collectively, and not by reference to name or names or list or lists of names appearing or contained in any book, paper, or other document, public or otherwise, whether or not in the possession of this Defendant, whom you intend to call as a witness, who have been allowed or permitted by this Defendant or her alleged agents to register to vote in Claiborne County, who were and are no better qualified to register to vote than negro citizens of Claiborne County who were allegedly denied the right to register to vote by this Defendant or her alleged agents; also, state separately the name and address of each and all other white citizens of Claiborne County, individually and not collectively, and not by reference to name or names or list or lists of names appearing or contained in any book, paper or other document, public or otherwise, whether or note in the possession of this Defendant, whom you presently believe or have reason to believe have been allowed or [fol. 631] permitted by this Defendant or her alleged agents to register to vote in Claiborne County, who were and are no better qualified to register to vote than negro citizens of Claiborne County who were allegedly denied the right to register to vote by this Defendant or her alleged agents.

In answering this interrogatory, please state with particularity the facts and circumstances surrounding each alleged incidence of this Defendant or his alleged agents allowing or permitting white citizens of Claiborne County to register to vote who were and are no better qualified to register to vote than negro citizens of said County who have allegedly been denied said right by this Defendant or

her alleged agents, including the name and address of each such white citizen of Claiborne County so permitted to register to vote; the date of said registration; the name, age, occupation, race, and address of any other person or persons present at the time of said registration; in what respect or respects said white applicants were and are no better qualified to register to vote than negro citizens of said county who have allegedly been denied said right by this Defendant or her alleged agents; and state the name, age, occupation, and address, individually, of each negro citizen who has allegedly been denied the right to register to vote who was and is as well qualified to register to vote as white citizens who have allegedly been permitted or allowed to register to vote by this Defendant or her alleged agents.

17. Are you willing to treat these interrogatories as continuing interrogatories, and to make further answer to each of them within fifteen days after you receive any additional information requested by the foregoing interrogatories?

[fol. 632] Mrs. Pauline Easley, Circuit Clerk, and Registrar of Claiborne County. By: Joe T. Drake, Jr., Attorney at Law Port Gibson, Mississippi. Joe T. Patterson, Attorney General of the State of Mississippi. Will S. Wells, Dugas Shands, Guy N. Rogers and William A. Allain, Assistant Attorneys General of the State of Mississippi. Peter M. Stockett, Jr., Darryl A. Hurt and Charles Clark, Special Assistant Attorneys General of the State of Mississippi New State Capitol Jackson, Mississippi. By: Joe T. Drake, Jr.

Certificate of service (omitted in printing.)

[fol. 633] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI SOUTHERN DIVISION

Civil Action No. 3312

[Title omitted]

INTERROGATORIES OF THE DEFENDANT T. E. WIGGINS—Filed July 9, 1963

To: The United States of America, Plaintiff.
Honorable Robert E. Hauberg,
United States Attorney,
Federal Building,
Jackson, Mississippi.

The Defendant, T. E. Wiggins, Circuit Court Clerk and Registrar of Lowndes County, Mississippi, requests the above named Plaintiff, the United States of America, by an officer or agent thereof, to answer under oath, in accordance with Rule 33 of the Federal Rules of Civil Procedure, the following interrogatories:

(1) State the factual basis for the assertion contained in Paragraph 12 of the Complaint concerning voting age population of Negro and white persons, and the approximate voter registration of each in Lowndes County, Mississippi. In answer to this interrogatory, please state with particularity that upon which this assertion is based.

(2) a. State with particularity the factual basis for the assertion contained in Paragraph 21 of the Complaint to the effect that, during the period from 1899 to approximately 1952, "white political supremacy' was maintained and promoted in Mississippi in the manner alleged in Subparagraphs (a), (b), and (c) of said Paragraph 21.

[fol. 634] (b) State with particularity any other methods, if any, by which you claim "white political supremacy" was maintained and promoted during said period in Mississippi and Lowndes County, Mississippi.

(c) State with particularity the name and address of each Negro citizen of Lowndes County, Mississippi who you

claim was not allowed to register to vote as charged in Sub. Section (a), the date of such alleged disallowance, and the name, address and official capacity, if any, of each person who you claim refused to allow said negroes to register to vote, and the factual circumstances surrounding each such alleged refusal, including the specific methods or means alleged to have been employed.

(d) Also, please state the name and address of each literate negro of Lowndes County, Mississippi, who you claim was required to interpret sections of the Mississippi Constitution as charged by subsection (b) of Paragraph 21 of the Complaint, and also state the name and address and official capacity, if any, of each person who you claim compelled each literate negro to interpret sed sections of the Mississippi Constitution.

(e) Also, please state the name and address of each negro of Lowndes County, Mississippi who you claim was excluded from Democratic primary elections in said County as charged in subsection (c) of Paragraph 21 of the Complaint, and state the name and address and official capacity, if any, of each person who excluded each negro from said Democratic primary elections, and state with particularity and specificity the factual circumstances surrounding each alleged incidence of negroes being excluded from said primary elections, including the specific manner or means by which said exclusion occurred.

(f) Also, please state with particularity the factual basis of each alleged incidence of this Defendant, T. E. Wiggins, as distinguished from any and all other Defendants, performing or committing any of the acts or practices charged in subsections (a), (b), or (c) of Paragraph 21 of the Complaint.

[fol. 635] (3) State the name, age, occupation and address of each "otherwise qualified" Negro citizen of Lowndes County, Mississippi, whom you intend to call as a witness on fht hearing for Preliminary and Permanent injunctions, individually, not collectively, and not by reference to name or names of list or lists of names appearing or contained in any book, paper, or other document, public or otherwise, whether or not in the possession of this Defendant, who has been deterred from applying for registration to vote because of the exist-

ence of the interpretation test and the duties and obligations test, or their enforcement or the "threat" of their enforcement, as alleged in Paragraph 41 of the Complaint; also, state separately the name, age, occupation and address of each and all other "otherwise qualified" Negro citizens of Lowndes County, Mississippi, individually, not collectively, and not by reference to name or names of list or lists of names appearing or contained in any book, paper, or other document, public or otherwise, whether or not in the possession of the Defendant, whom you presently believe, or have reason to believe, to have been deterred from applying for registration to vote because of the interpretation test and the duties and obligations test, or their enforcement or the "threat" of their enforcement, as alleged in said Paragraph 41 of the Complaint.

(4) Please state with particularity the factual basis for the assertion made in Paragraph 52 of the Complaint as amended that the existence of the good moral character qualification in Mississippi, its enforcement and the threat of its enforcement, have deterred qualified negro citizens in Lowndes County, Mississippi from applying to register to vote.

In answering this interrogatory, please state the name, address, age, literacy level and length of residence with the County and State, of each negro citizen of Lowndes County, Mississippi who you claim has been so deterred by the existence, enforcement or threat or enforcement, of the good moral character qualification.

In answering this interrogatory, please state the name, address, age, literacy level and length of residence [fol. 636] within the County and State, of each negro citizen of Lowndes County, Mississippi who you claim is being deterred by the existence, enforcement or threat of enforcement, of the good moral character qualification.

Please state the factual basis for the assertion made in Paragraph 52 of the Complaint as amended that the threatened use and the use by this Defendant, T. E. Wiggins, of the character requirement, deprive and will deprive otherwise qualified negro citizens of the right to register to vote without distinction of race or color, and that such deprivations, occuring by the adoption, use and threat of use, of the character requirement, have been and are

pursuant to a pattern and practice of racial discrimination. In answering this interrogatory, please state each individual act which constitutes "a pattern and practice of racial discrimination" with which you seek to charge this Defendant as alleged in Paragraph 52 of the Complaint as amended, and state the name, address, age, literacy level, and length of residence in the State and County of each negro citizen of Lowndes County, Mississippi, individually, otherwise qualified to register to vote who you claim has been deprived of the right to register to vote by this Defendant, by the use and/or threatened use of the character requirement; also, state the name or names of the person or persons who allegedly effected or committed such deprivations, the precise nature of the deprivations and the name and address of any other person known to you to have been present on such occasions. Also state the name, and address, of each negro citizen of Lowndes County, Mississippi as to whom you claim the good moral character requirement has been applied and the name of each person applying said requirement to each of said negro citizens, and the date and circumstances of each application of said good moral character requirement to each of said negro citizens of Lowndes County, Mississippi.

(5) (a) State with particularity the factual basis for the assertions contained in Paragraphs 69 and 70 of the Complaint that "otherwise qualified" Negro citizens of the State of Mississippi have been, are now and will in the [fol. 637] future be deterred from applying to register to vote, and will be deprived of their right to register to vote without distinction of race or color unless this Defendant and his alleged agents are restrained from enforcing or "threatening" to enforce the registration requirements as described in Paragraph 66 of the Complaint, or because of the existence of said requirements.

(b) State the name, age, occupation, address, literacy level, and length of residence in the State and County, of each "otherwise qualified" Negro citizen of Lowndes County, Mississippi, individually, not collectively, and not by reference to name or names or list or lists of names appearing or contained in any book, paper or other document, public or otherwise, whether or not in the possession

of this Defendant, whom you intend to call as a witness on the hearing on the Preliminary and Permanent Injunctions who have been deterred, are now deterred, and will in the future be deterred from applying to register to vote in Lowndes County, Mississippi, because of the existence of the registration requirements described in Paragraph 66 of the Complaint, or because of the enforcement or "threat" of enforcement of the registration requirements described in Paragraph 66 of the Complaint by this Defendant; also state separately the name, occupation, address, literacy level, and length of residence in the State and County, of each and all other "otherwise qualified" Negro citizens of Lowndes County, Mississippi, individually, not collectively, and not by reference to name or names or list or lists of names appearing or contained in any book, paper or other document, public or otherwise, whether or not in the possession of this Defendant, whom you presently believe or have reason to believe to have been deterred, are now deterred and will be in the future deterred from applying to register to vote in said County because of the existence of the registration requirements described in Paragraph 66 of the Complaint or the enforcement or "threat" of enforcement of the registration requirements described in Paragraph 66 of the Complaint by this Defendant.

[fol. 638] (6) State the name and address of each "otherwise qualified" Negro citizen of Lowndes County, Mississippi, individually, not collectively, and not by reference to name or names or list or lists of names appearing or contained in any book, paper or other document, public or otherwise, whether or not in the possession of this Defendant, whom you claim has been denied the right to register to vote without distinction of race or color by this Defendant or his alleged agents by operation of ". . . Section 244 of the Mississippi Constitution of 1890 prior to its amendment in the year 1955, and all legislation implementing the same . . ."

In answering this interrogatory, please state with particularity the facts surrounding each alleged incidence of such denial, including the name or names of the person or persons who effected or committed such denial; the date, time and place of such denial; the specific nature of

the denial; and the name, age, occupation, race and address of each and every person present when such denial alledgedly occurred.

(7) State the name and address of each "otherwise qualified" Negro citizen of Lowndes County, Mississippi, individually, not collectively, and not by reference to name or names or list or lists of names appearing or contained in any book, paper or other document, public or otherwise, whether or not in the possession of this Defendant, whom you claim has been denied the right to register to vote without distinction of race or color by this Defendant or his alleged agents by operation of ". . . Section 244 of the Mississippi Constitution of 1890 as amended in the year 1955, and all legislation implementing the same. . . ."

In answering this interrogatory, please state with particularity the facts surrounding each alleged incidence of such denial, including the name or names of the person or persons who effected or committed such denial; the date, time and place of such denial; the specific nature of the denial; and the name, age, occupation, race and address of each and every person present when such denial allegedly occurred.

[fol. 639] (8) State the name and address of each "otherwise qualified" Negro citizen of Lowndes County, Mississippi, individually, not collectively, and not by reference to name or names or list or lists of names appearing or contained in any book, paper, or other document, public or otherwise, whether or not in the possession of this Defendant, whom you claim has been denied the right to register to vote without distinction of race or color by this Defendant or his alleged agents by operation of ". . . Section 241-A of the Mississippi Constitution of 1890, and all legislation implementing the same. . . ."

In answering this interrogatory, please state with particularity the facts surrounding each alleged incidence of such denial, including the name or names of the person or persons who effected or committed such denial; the date, time and place of such denial; the specific nature of the denial; and the name, age, occupation, race and address of each and every person present when such denial allegedly occurred.

(9) Please state the name and address of each Negro citizen, individually, not collectively, and not by reference to name or names or list or lists of names appearing or contained in any book, paper or other document, public or otherwise, whether or not in the possession of this Defendant, whom you claim has complied with all of the requirements of registering to vote in the State of Mississippi and who has been denied the right to register to vote on account of race or color by this Defendant or his alleged agents.

In answering this interrogatory, please state with particularity the facts surrounding each alleged incident of such denial, including the name, age, occupation, race and address of the person or persons who effected or committed such denial; the date, time, place and location of such denial; the specific nature of the denial; and the name, age, occupation, race and address of any other person or persons present when such denial allegedly occurred.

[fol. 640] (10) State the name and address of each Negro citizen of Lowndes County, Mississippi, individually, not collectively, and not by reference to name or names on list or lists of names appearing or contained in any book, paper or other document, public or otherwise, whether or not in the possession of this Defendant, whom you claim has been delayed, prevented, hindered, harassed or discouraged from applying to register to vote on account of race or color by this Defendant or his alleged agents.

In answering this interrogatory, state with particularity each and every act or practice allegedly engaged in by this Defendant or his alleged agents, and the facts and circumstances surrounding each alleged incident, including, but not specifically limited to, the name or names and address of the person or persons who effected, committed, or participated in such acts and practices; the date, time and place when and where each such alleged act or practice was committed, executed or performed; and the name, age, occupation, race and address of each and every person present when each such alleged act or practice was committed, executed or performed.

(11) State the name and address of each white citizen of Lowndes County, Mississippi, individually, not collectively, and not by reference to name or names or list or lists of

names appearing or contained in any book, paper or other document, public or otherwise, whether or not in the possession of this Defendant, whom you intend to call as a witness on the hearing for Preliminary and Permanent Injunctions who have been afforded by this Defendant or his alleged agents opportunities to register to vote in Lowndes County, Mississippi, which opportunities have allegedly been denied by this Defendant or his alleged agents to Negro applicants for registration in said County; also, state separately the name and address of each and all other white citizens of said County, individually, not collectively, and not by reference to name or names or list or lists of names appearing or contained in any book, paper or other document, public or otherwise, whether [fol. 641] or not in the possession of this Defendant, whom you presently believe or have reason to believe have been afforded opportunities to register to vote by this Defendant or his alleged agents, which opportunities have been denied to Negro applicants for registration.

In answering this interrogatory, please state with particularity each incidence of this Defendant or his alleged agents affording white applicants opportunities to register to vote which this Defendant or his alleged agents have allegedly denied Negro applicants, including the name and address of each white person afforded such opportunity; the date and time of the occurrence of the affording of such white person or persons said opportunity; the nature of the opportunity afforded such white person or persons which has allegedly been denied by thie Defendant or his alleged agents to Negro applicants for registration; the place of the occurrence of the affording of said opportunities to register to vote to said white persons; the name, age, occupation, race and address of all persons present on such occasions; the name, age, occupation and address of each Negro citizen of Lowndes County, Mississippi, who has allegedly been denied by this Defendant or his alleged agent such opportunities to register to vote in said County.

(12) State the name and address of each white citizen of Lowndes County, Mississippi, individually, not collectively, and not by reference to name or names or list or lists of names appearing or contained in any book, paper

or other document, public or otherwise, whether or not in the possession of this Defendant, whom you intend to call as a witness on the hearing for Preliminary and Permanent Injunctions who have been allowed or permitted by this Defendant or his alleged agents to register to [fol. 642] vote in Lowndes County, Mississippi, who were and are no better qualified to register to vote than Negro citizens of Lowndes County, Mississippi, who were allegedly denied the right to register to vote by this Defendant or his alleged agents; also state separately the name and address of each and all other white citizens of Lowndes County, Mississippi, individually, not collectively, and not by reference to name or names or list or lists of names appearing or contained in any book, paper or other document, public or otherwise, whether or not in the possession of this Defendant, whom you presently believe or have reason to believe have been allowed or permitted by this Defendant or his alleged agents to register to vote in Lowndes County, Mississippi, who were and are no better qualified to register to vote than Negro citizens of Lowndes County, Mississippi, who were allegedly denied the right to register to vote by this Defendant or his alleged agents.

In answering this interrogatory, please state with particularity the facts and circumstances surrounding each alleged incidence of this Defendant or his alleged agents allowing or permitting white citizens of Lowndes County, Mississippi, to register to vote who were and are no better qualified to register to vote than Negro citizens of said County who have allegedly been denied said right by this Defendant or his alleged agents, including the name and address of each such white citizen of Lowndes County, Mississippi, so permitted to register to vote; the date of said registration; the name, age, occupation, race and address of any other person or persons present at the time of said registration; the place of said registration; in what [fol. 643] respect or respects said white applicants were and are no better qualified to register to vote than Negro citizens of said County who have allegedly been denied said right by this Defendant or his alleged agents; and state the name, age, occupation and address, individually, of each Negro citizen who has allegedly been denied the right to register to vote who was and is as well

qualified to register to vote as white citizens who have allegedly been permitted or allowed to register to vote by this Defendant or his alleged agents.

(13) State the name and address of each and every agent of the Federal Bureau of Investigation who has interviewed any witnesses, or who has taken, or is in possession of, any memoranda or any statements, whether written or otherwise, made by any person with reference to, or having any connection with, the registration of voters in Lowndes County, Mississippi, by this Defendant or his alleged agents.

(14) State the name, age, occupation, race and address of each and every person who has been interviewed by any agent or attorney of Plaintiff relative to the acts and practices of this Defendant or his alleged agents in the performance and discharge of his duties as Registrar of Voters of Lowndes County, Mississippi.

(15) State the name, occupation, race and address of each and every person who has given or furnished any statement of statements, written or oral, signed or unsigned, to any agent or attorney for Plaintiff relative to or having any connection with the acts and practices of this Defendant or his alleged agents in the performance and discharge of his duties as Registrar of Voters in Lowndes County, Mississippi. In answer to this interrog- [fol. 644] atory, state which of these persons, if any, gave written statements, which of these persons, if any, gave oral statements; and state which of these persons, if any, who gave written statements signed such statements.

(16) State the name, age, occupation, race and address of each person not previously listed or named in answering these interrogatories whom you intend to call as a witness against this Defendant on the hearing for Preliminary and Permanent Injunctions, and state with particularity what you intend to prove by each such witness.

(17) Please treat the interrogatories as continuing interrogatories, and answer each of them within fifteen (15) days after you receive any additional information requested herein.

Please take notice that a copy of the Answer to these

interrogatories must be served upon the undersigned within fifteen (15) days after service hereof.

T. E. Wiggins, Circuit Court Clerk and Registrar Lowndes County, Mississippi Defendant. By: Wm. G. Burgin, Jr., Attorney at Law, Columbus, Mississippi. W. H. Jolly, Attorney at Law, Columbus, Mississippi. J. O. Sams, Jr., Attorney at Law, Columbus, Mississippi. Joe T. Patterson, Attorney General, State of Mississippi, Jackson, Mississippi. By: Wm. G. Burgin, Jr., One of the Attorneys of Record for Defendant.

[fol. 645] Certificate of service omitted in printing.

[fol. 646] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI JACKSON DIVISION

Civil Action No. 3312

[Title omitted]

APPLICATION FOR ORDER FOR EXTENSION OF TIME IN WHICH TO FILE ANSWERS TO INTERROGATORIES—Filed July 13, 1963.

Plaintiff applies for an extension of time to answer interrogatories served by the Defendant State of Mississippi on May 17, 1963 due July 5, 1963; interrogatories served by Defendant J. W. Smith, Circuit Clerk and Registrar of Coahoma County, Mississippi served on June 6, 1963 due on July 10, 1963 and interrogatories served by Defendant Pauline Easley, Circuit Clerk and Registrar of Claiborne County, Mississippi on June 20, 1963 due on July 5, 1963 until August 15, 1963. Plaintiff is in the process of preparing with diligence answers to these interrogatories

but because the answers require exhaustive investigation and preparation, they will not be completed until August 15, 1963.

John Doar Attorney, Department of Justice.

[fol. 647] [File Endorsement Omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI JACKSON DIVISION

Civil Action No. 3312

(Title Omitted)

ORDER EXTENDING TIME WITHIN WHICH TO FILE ANSWERS TO INTERROGATORIES—July 2, 1963

Based upon the application of the plaintiff for an extension of time in which to answer the interrogatories served by the defendants on May 17, 1963, June 6, 1963 and June 20, 1963 it is ordered that the time for answering said interrogatories be and the same is extended to August 15, 1963.

Done this 2nd day of July, 1963.

John Minor Wisdom, United States Circuit Judge.

[fols. 648-653] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI JACKSON DIVISION

Civil Action No. 3312

(Title Omitted)

ORDER ENLARGING TIME WITHIN WHICH TO FILE ANSWERS TO INTERROGATORIES OF DEFENDANT T. E. WIGGINS—July 15, 1963.

The Plaintiff, United States of America, having moved this Court for an enlargement of time to and including August 15, 1963, within which to file answers to interrogatories filed by the defendant T. E. Wiggins. Counsel having been heard, and it appearing that preparation of such answer is in progress but can not be completed until August 15, 1963, because of the length and complexity of such interrogatories it is, therefore,

Ordered, that the Plaintiff, United States of America is hereby granted an enlargement of time within which to file answers to interrogatories propounded by the Defendant T. E. Wiggins through and including August 15, 1963.

Ordered, this 15 day of July, A. D., 1963.

Harold Cox, United States District Judge.

[fol. 654] [File Endorsement Omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3312

[Title omitted]

APPLICATION FOR ORDER FOR EXTENSION OF TIME IN WHICH TO FILE ANSWERS TO INTERROGATORIES—Filed August 14, 1963.

Plaintiff applies for an extension of time to answer interrogatories served by the defendant State of Mississippi on May 17, 1963; interrogatories served by defendant J. W. Smith, Circuit Clerk and Registrar of Coahoma County, Mississippi on June 6, 1964; interrogatories served by defendant Pauline Easley, Cicuit Clerk and Registrar of Claiborne County, Mississippi on June 20, 1963 and interrogatories served by defendant T. E. Wiggins, Circuit Clerk and Registrar of Lowndes County, Mississippi, by mail, on July 8, 1963. By Orders of this Court of July 13, 1963 and July 15, 1963, time for answering said interrogatories was set on August 15, 1963.

[fol. 655] Plaintiff is in the process of preparing with diligence answers to these interrogatories, but because the answers require exhaustive investigation and preparation, they will not be completed until September 1, 1963.

Wherefore, plaintiff applies to this Court for an extension of time within which to answer the aforesaid interrogatories to and include September 1, 1963.

D. Robert Owen, Attorney, Department of Justice.

[fol. 656] Certificate of Service Omitted in printing.

[fol. 657] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI JACKSON DIVISION

Civil Action No. 3312

[Title omitted]

ORDER EXTENDING TIME WITHIN WHICH TO FILE ANSWERS TO INTERROGATORIES—August 14, 1963

Based upon the application of the plaintiff for an extension of time in which to answer the interrogatories served by the defendants on May 17, 1963, June 6, 1963, June 20, 1963 and July 8, 1963,

It Is Ordered that the time for answering said interrogatories be and the same is hereby extended to and including September 1, 1963.

Done this 14 day of August, 1963 A. D.

Harold Cox, United States District Judge.

[fol. 658] Certificate of Service Omitted in printing

[fol. 659] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3312

[Title omitted]

ANSWERS TO INTERROGATORIES OF STATE OF MISSISSIPPI; MRS. PAULINE EASLEY, CIRCUIT CLERK AND REGISTRAR OF CLAIBORNE COUNTY; J. W. SMITH, CIRCUIT CLERK AND REGISTRAR OF COAHOMA COUNTY; T. E. WIGGINS, CIRCUIT CLERK AND REGISTRAR OF LOWNDES COUNTY—filed September 3, 1963.

Statistics
Census—Registration—Voting
1890—1962

[fol. 660] ANSWERS TO STATE'S INTERROGATORIES No. 1, 6, 9, 13(a), 13(b), SMITH'S INTERROGATORY No. 1, AND WIGGINS' INTERROGATORY No. 1 RELATING TO FACTUAL BASIS FOR CERTAIN STATISTICAL ALLEGATIONS IN PLAINTIFF'S AMENDED COMPLAINT.

The plaintiff has combined its answers to State's Interrogatories Nos. 1, 6, 9, 13(a), 13(b) and Coahoma's Interrogatory No. 1 because each of these interrogatories inquire as to the factual basis for certain allegations with respect to census and registration statistics in the State of Mississippi on certain dates and for certain periods.

A. Relevant Statistics

Relevant statistics include census statistics by race of those persons twenty-one years or older in Mississippi and registration statistics by race of all persons who were registered to vote as of a specific date.

B. Relevant Dates

The statistical information as of the following dates is relevant:

January 1, 1890
January 1, 1899
January 1, 1954
March 24, 1955
January 1, 1960
June 1, 1962

January 1, 1890—In 1890 a Mississippi Constitutional Convention adopted a new state constitution, including Section 244 which re-
[fol. 661] quired a new registration of voters beginning January 1, 1892 and which established as a new prerequisite to voting, to wit: a person otherwise qualified be able to read any section of the Mississippi Constitution or understand the same when read to him, or give a reasonable interpretation thereof.

January 1, 1899—By that date 82% of the white males of voting age and only 9% of the Negro males of voting age were registered.

January 1, 1954—On November 22, 1954 the electorate of Mississippi adopted an interpretation test as an additional prerequisite to voting but exempted persons registered prior to January 1, 1954 from being subject to the test.

March 24, 1955 —Date when the use of constitutional interpretation test was first authorized by implementing legislation in Mississippi. All persons who registered between January 1, 1954 and March 24, 1955 were registered without taking the constitutional interpretation test.

[fol. 662]

January 1, 1960—On November 8, 1960 the electorate of the State of Mississippi adopted a requirement that all electors be of good moral character.

June 1, 1962 —The first day of the first month following the effective date of the passage of the package of legislation by the Legislature of Mississippi in May 1962 effecting the procedures under which an applicant for registration applies to register and effecting standards which a registrar must apply in grading applications for registration.

In some instances the particular date selected was done for convenience, e.g., January 1, 1899 and January 1, 1960.

C. Documents

The documents upon which the plaintiff intends to rely in proving the statistical allegations in the complaint are the following:

1. Certified copies of census information for the State of Mississippi for the years 189[illegible] 1900, 1910, 1920, 1930, 1940, 1950 and 1960. The pertinent census information will be that which specifies the number of persons twenty-one years or older in Mississippi by race as of the census date.

[fol. 663] 2. Registration records. Microfilm of all registration records photographed by the Government in

Mississippi. The particular registration records that are relevant in determining registration statistics are the current registration books. Since Mississippi has eliminated the requirement that the race of the registrant be included on the registration book and since some of the registration books are not maintained as accurately with respect to deaths and transfers, other records are also relevant on registration statistics. These other records include old registration books, current and all primary and general poll books, poll tax receipts, poll tax payers lists and application forms.

Attached and incorporated as part of the answers to the above interrogatories are summary sheets for each county wherein records have been obtained or wherein information has been obtained from the present registrar of the county. On each of these summary sheets is contained the relevant statistical information by county and an explanation of when, from what and how this information was obtained. Summary tables and maps are also attached for your convenience.

Because of a policy of the State of Mississippi and its officials, the Government has neither obtained all of the registration records from many of the counties [fol. 664] of which we attach summary sheets or from all of the counties in Mississippi. With respect to counties where we do not have the official registration records, we will rely upon the secondary sources which will include the following: statistics of the number of persons that voted in the first primary for Governor in the years 1951, 1955, 1959 and 1963.

Where the necessary statistical facts are incomplete, we will also call witnesses. For your information, we may call as a witness James Barnes who in 1955 made a survey of the voting done by Negroes in Mississippi. A copy of Barnes' survey is attached hereto for your convenience.

We may call as witnesses registrars with respect to the registration statistics by race in their respective counties.

We may call as witnesses persons who have been told the facts by registrars with respect to registration statistics on the relevant dates.

Primary, General Election and Registered Vote by Race, 1899

Counties.	Primary Vote for Governor.						Total vote for Governor in general election.	Primary Vote for U. S. Senator—Long Term.					Total vote Long Term.	Short Term.		Total vote Short Term.	Highest Primary vote for State or County candidate.	Highest vote for County Office in general election.	Registered White vote.	Registered Colored vote.	Total registered vote.
	A. H. Longino.	F. A. Crits.	Jas. F. McCool.	W. A. Montgomery.	Jas. K. Vardaman.	Robert Powell.		A. J. McLaurin.	John M. Allen.	J. S. Williams.	S. D. Robbins.	W. V. Sullivan.		W. V. Sullivan.	Robert Lowry.						
Adams	....	....	....	....	....	....	339	518	449	....	3	....	970	615	276	891	1,032	350	1,182	261	1,443
Alcorn	....	....	....	....	....	....	878	....	....	....	....	....	....	....	....	....	1,575	1,233	2,344	154	2,498
Amite	332	516	14	439	9	32	584	659	213	443	....	....	1,315	961	299	1,260	1,367	584	1,787	276	2,063
Attala	....	....	....	....	....	....	1,395	Con.	....	....	....	....	....	....	Con.	....	2,290	1,419	3,000	500	3,500
Benton	....	....	....	....	....	....	352	....	....	....	....	....	....	....	....	....	864	362	880	120	1,000
*Bolivar	....	....	....	....	....	....	420	Primary.	....	....	....	....	....	....	....	....	....	424	460	219	679
Calhoun	....	....	....	....	....	....	960	1,383	359	....	....	....	1,742	1,262	327	1,589	1,865	1,055	2,040	245	2,285
Carroll	....	....	....	....	....	....	1,334	690	294	....	....	....	984	515	694	1,209	1,204	1,485	2,129	631	2,760
Chickasaw	....	....	....	....	....	....	1,089	602	408	....	....	....	1,010	232	665	897	1,056	1,433	1,600	400	2,000
Choctaw	....	....	....	....	....	....	1,416	512	593	....	....	....	1,105	625	376	1,001	1,806	1,526	1,600	300	1,900
Claiborne	220	10	17	194	266	132	242	468	256	....	....	....	724	322	500	822	863	242	1,075	67	1,142
Clarke	655	861	....	....	....	....	489	1,259	238	....	....	....	1,497	940	545	1,485	1,549	489	1,822	32	1,854
Clay	....	....	....	....	....	....	466	....	....	....	....	....	....	....	....	....	1,081	466	1,305	135	1,440
Coahoma	....	....	....	....	....	....	440	486	243	....	1	....	730	....	....	....	767	481	876	240	1,116
Copiah	....	....	....	....	....	....	1,260	1,509	617	38	....	....	2,164	1,145	953	2,098	2,205	1,260	2,786	143	2,929
Covington	....	....	....	....	....	....	340	964	237	188	....	....	1,389	351	733	1,084	1,569	373	1,526	497	2,023
DeSoto	275	317	8	11	599	21	407	451	777	....	....	....	1,228	609	379	988	1,363	408	1,909	212	2,121
*Franklin	317	403	12	43	14	87	776	594	185	117	10	....	906	....	....	....	....	1,010	970	103	1,073
*Greene	86	490	....	....	....	....	327	442	164	90	....	....	696	233	223	456	....	743	759	75	834
*Grenada	....	....	....	....	....	....	308	510	257	....	5	....	772	269	523	792	792	310	788	303	1,091
Hancock	....	....	....	....	Var.	....	218	420	207	....	....	....	627	183	478	661	730	224	1,057	117	1,174
*Harrison	....	....	....	....	....	....	418	732	266	50	10	....	1,058	313	613	926	1,154	459	1,892	235	2,127
*Hinds	....	....	....	....	....	....	794	1,676	316	584	20	....	2,596	893	1,675	2,568	2,590	794	3,273	220	3,493
Holmes	....	....	....	....	....	....	687	868	789	34	16	....	1,707	963	741	1,704	1,744	687	2,092	434	2,526
*Issaquena	....	....	....	....	....	....	84	152	5	2	....	....	159	155	3	158	....	84	169	99	268
*Itawamba	....	....	....	....	....	....	447	....	....	....	....	....	....	....	....	....	....	543	1,996	73	2,069
Jackson	....	....	....	....	....	....	305	236	857	43	40	....	1,176	461	702	1,163	1,111	321	1,900	250	2,150
Jasper	....	....	....	....	....	....	473	....	....	....	....	....	....	....	....	....	....	477	1,584	74	1,658
Jefferson	409	15	58	128	90	76	471	588	71	138	6	....	803	262	531	793	813	471	1,131	454	1,585
*Jones	806	523	31	25	....	....	786	1,151	204	....	....	....	1,355	890	348	1,238	1,464	793	1,530	108	1,638
*Kemper	94	643	74	53	63	54	1,154	816	195	36	....	....	1,047	235	716	951	1,240	1,301	1,820	243	2,063
Lafayette	....	....	....	....	....	....	696	49	275	....	....	1,834	2,158	1,884	224	2,108	2,150	696	3,141	525	3,666
*Lauderdale	....	....	....	....	....	....	1,191	1,074	1,214	73	....	....	2,361	1,029	1,227	2,256	2,487	1,193	2,895	386	3,281
*Lawrence	....	....	....	....	....	....	673	895	423	....	....	....	1,318	768	444	1,212	1,478	696	1,156	478	1,634
Leake	....	....	....	....	....	....	661	1,287	694	....	....	....	1,981	839	1,086	1,925	2,099	663	2,413	422	2,835
Lee	....	....	....	....	....	....	619	....	....	....	....	....	....	....	....	....	2,149	673	1,225	500	1,725
Leflore	....	....	....	....	....	....	230	....	....	....	....	....	....	....	....	....	617	230	812	43	855
*Lincoln	926	....	....	....	....	661	7,234	757	617	71	10	....	1,455	841	518	1,359	1,641	1,304	1,842	502	2,344
Lowndes	....	....	....	....	....	....	424	....	....	....	....	....	....	....	....	....	1,340	424	1,656	106	1,762
Madison	....	....	....	....	....	....	311	....	....	....	....	....	....	....	....	....	....	311	1,150	125	1,275
Marion	....	....	....	....	....	....	879	....	....	....	....	....	....	....	....	....	....	1,354	1,344	386	1,730
Marshall	....	....	....	....	....	....	712	106	775	....	....	581	1,462	875	552	1,427	1,518	716	2,066	247	2,313
*Monroe	....	....	....	....	....	....	821	474	1,670	....	....	....	2,114	673	1,390	2,063	....	890	2,564	270	2,834
Montgomery	....	....	....	....	....	....	843	180	468	801	....	....	1,449	867	462	1,329	1,460	843	2,571	300	2,871
Neshoba	....	....	....	....	....	....	858	620	67	161	....	....	848	473	377	850	1,652	758	1,950	270	2,220
Newton	347	570	569	390	29	15	934	1,423	306	91	27	....	1,847	486	1,264	1,750	1,869	936	2,572	82	2,654
Noxubee	....	....	....	....	....	....	467	659	375	33	....	....	1,067	293	688	981	1,076	467	1,233	44	1,277
Oktibbeha							548	....	....	....	....	....	....	....	....	....	....	552	1,350	117	1,467

	A. H. I	F. A. C	Jas. F.	W. A.	Jas. K.	Robert	Total v eral	A. J. M	John A	J. S. W	S. D. R	W. V.	Total	W. V.	Robert	Total	Higher or C	Highe in g	Regist	Regis	Total
Adams	....	....	....	....	....	....	339	518	449	....	3	....	970	615	276	891	1,032	350	1,182	261	1,443
Alcorn	....	....	....	....	....	....	878	....	....	....	....	....	....	....	....	....	1,575	1,233	2,344	154	2,498
Amite	332	516	14	439	9	32	584	659	213	443	....	....	1,315	961	299	1,260	1,367	584	1,787	276	2,063
Attala	....	....	....	....	....	....	1,395	Con.	....	....	....	....	....	....	Con.	....	2,290	1,419	3,000	500	3,500
Benton	....	....	....	....	....	....	352	....	....	....	....	....	....	....	....	....	864	362	880	120	1,000
*Bolivar	....	....	....	....	....	....	420	Primary.	....	....	....	....	....	....	....	....	....	424	460	219	679
Calhoun	....	....	....	....	....	....	960	1,383	359	....	....	....	1,742	1,262	327	1,589	1,865	1,055	2,040	245	2,285
Carroll	....	....	....	....	....	....	1,334	690	294	....	....	....	984	515	694	1,209	1,204	1,485	2,129	631	2,760
Chickasaw	....	....	....	....	....	....	1,089	602	408	....	....	....	1,010	232	665	897	1,056	1,433	1,600	400	2,000
Choctaw	....	....	....	....	....	....	1,416	512	593	....	....	....	1,105	625	376	1,001	1,806	1,526	1,600	300	1,900
Claiborne	220	10	17	194	266	132	242	468	256	....	....	....	724	322	500	822	863	242	1,075	67	1,142
Clarke	655	861	....	....	....	....	489	1,259	238	....	....	....	1,497	940	545	1,485	1,549	489	1,822	32	1,854
Clay	....	....	....	....	....	....	466	....	....	....	....	....	....	....	....	....	1,081	466	1,305	135	1,440
Coahoma	....	....	....	....	....	....	440	486	243	....	1	....	730	....	....	....	767	481	876	240	1,116
Copiah	....	....	....	....	....	....	1,260	1,509	617	38	....	....	2,164	1,145	953	2,098	2,205	1,260	2,786	143	2,929
Covington	....	....	....	....	....	....	340	964	237	188	....	....	1,389	351	733	1,084	1,569	373	1,526	497	2,023
DeSoto	275	317	8	11	599	21	407	451	777	....	....	....	1,228	609	379	988	1,363	408	1,909	212	2,121
*Franklin	317	403	12	43	14	87	776	594	185	117	10	....	906	....	....	....	....	1,010	970	103	1,073
*Greene	86	490	....	....	....	....	327	442	164	90	....	....	696	233	223	456	....	743	759	75	834
*Grenada	....	....	....	....	....	....	308	510	257	....	5	....	772	269	523	792	792	310	788	303	1,091
Hancock	....	....	....	....	Var.	....	218	420	207	....	....	....	627	183	478	661	730	224	1,057	117	1,174
*Harrison	....	....	....	....	....	....	418	782	266	50	10	....	1,058	313	613	926	1,154	459	1,892	235	2,127
*Hinds	....	....	....	....	....	....	794	1,676	316	584	20	....	2,596	893	1,675	2,568	2,590	794	3,273	220	3,493
Holmes	....	....	....	....	....	....	687	868	789	34	16	....	1,707	963	741	1,704	1,744	687	2,092	434	2,526
*Issaquena	....	....	....	....	....	....	84	152	5	2	....	....	159	155	3	158	....	84	169	99	268
*Itawamba	....	....	....	....	....	....	447	....	....	....	....	....	....	....	....	....	....	543	1,996	73	2,069
Jackson	....	....	....	....	....	....	305	236	857	43	40	....	1,176	461	702	1,163	1,111	321	1,900	250	2,150
Jasper	....	....	....	....	....	....	473	....	....	....	....	....	....	....	....	....	....	477	1,584	74	1,658
Jefferson	409	15	58	128	90	76	471	588	71	138	6	....	803	262	531	793	813	471	1,131	454	1,585
*Jones	806	523	31	25	....	....	786	1,151	204	....	....	....	1,355	890	348	1,238	1,464	793	1,530	108	1,638
*Kemper	94	643	74	53	63	54	1,154	816	195	36	....	....	1,047	235	716	951	1,240	1,301	1,820	243	2,063
Lafayette	....	....	....	....	....	....	696	49	275	....	....	1,834	2,158	1,884	224	2,108	2,158	696	3,141	525	3,666
*Lauderdale	....	....	....	....	....	....	1,191	1,074	1,214	73	....	....	2,361	1,029	1,227	2,256	2,487	1,193	2,895	386	3,281
*Lawrence	....	....	....	....	....	....	673	895	423	....	....	....	1,318	768	444	1,212	1,478	696	1,156	478	1,634
Leake	....	....	....	....	....	....	661	1,287	694	....	....	....	1,981	839	1,086	1,925	2,009	663	2,413	422	2,835
Lee	....	....	....	....	....	....	619	....	....	....	....	....	....	....	....	....	2,149	673	1,225	500	1,725
Leflore	....	....	....	....	....	....	230	....	....	....	....	....	....	....	....	....	617	230	812	43	855
*Lincoln	926	....	....	....	....	661	7,234	757	617	71	10	....	1,455	841	518	1,359	1,641	1,304	1,842	502	2,344
Lowndes	....	....	....	....	....	....	424	....	....	....	....	....	....	....	....	....	1,340	424	1,656	106	1,762
Madison	....	....	....	....	....	....	311	....	....	....	....	....	....	....	....	....	....	311	1,150	125	1,275
Marion	....	....	....	....	....	....	879	....	....	....	....	....	....	....	....	....	....	1,354	1,344	386	1,730
Marshall	....	....	....	....	....	....	712	106	775	....	....	581	1,462	875	552	1,427	1,518	716	2,066	247	2,313
*Monroe	....	....	....	....	....	....	821	474	1,670	....	....	....	2,114	673	1,390	2,063	....	890	2,564	270	2,834
Montgomery	....	....	....	....	....	....	843	180	468	801	....	....	1,449	867	462	1,329	1,460	843	2,571	300	2,871
Neshoba	....	....	....	....	....	....	858	620	67	161	....	....	848	473	377	850	1,652	758	1,950	270	2,220
Newton	347	570	569	390	29	15	934	1,423	306	91	27	....	1,847	486	1,264	1,750	1,869	936	2,572	82	2,654
Noxubee	....	....	....	....	....	....	467	659	375	33	....	....	1,067	293	688	981	1,076	467	1,233	44	1,277
Oktibbeha	....	....	....	....	....	....	548	....	....	....	....	....	....	....	....	....	....	552	1,350	117	1,467
Panola	....	....	....	....	....	....	551	1,203	594	....	....	....	1,797	1,162	691	1,853	1,881	551	2,751	385	3,136
Pearl River	....	....	....	....	....	....	302	334	36	55	5	....	430	72	316	388	508	436	729	111	840
*Perry	411	239	270	31	30	30	428	659	221	....	....	....	880	320	256	576	....	460	1,000	112	1,112
Pike	....	....	....	....	....	....	661	1,374	326	....	22	298	2,020	1,046	772	1,818	1,991	671	3,312	322	3,634
Pontotoc	....	....	....	....	....	....	1,355	....	....	....	....	....	....	....	....	....	1,620	1,775	1,921	249	2,170
Prentiss	....	....	....	....	....	....	968	....	....	....	....	....	....	....	....	....	2,076	1,084	2,205	291	2,496
Quitman	....	....	....	....	....	....	182	Con.	....	....	....	....	....	....	....	....	224	196	319	130	449
Rankin	....	....	....	....	....	....	786	1,360	76	....	....	....	1,436	411	1,048	1,459	1,558	786	2,182	276	2,458
Scott	506	653	19	60	....	14	721	1,098	17	....	....	....	1,271	756	466	1,222	1,098	848	1,743	418	2,181
*Sharkey	....	....	....	....	....	....	136	Con.	....	....	....	....	....	....	....	....	....	140	345	51	396
Simpson	....	....	....	....	....	....	917	990	62	66	18	....	1,236	....	....	....	1,211	1,044	1,600	150	1,750
Smith	....	....	....	....	....	....	1,426	Con.	....	....	....	....	....	....	....	....	....	1,827	1,883	230	2,113
Sunflower	....	....	....	....	....	....	249	....	....	....	....	....	....	....	....	....	743	250	869	40	907
*Tallahatchie	....	....	....	....	....	....	351	220	355	....	....	522	1,097	800	207	1,027	....	351	1,540	245	1,785
Tate	....	....	....	....	....	....	545	806	545	....	23	201	1,575	755	727	1,482	1,620	615	2,000	450	2,450
*Tippah	317	439	26	14	131	3	815	278	944	....	....	....	1,222	619	553	1,172	1,253	1,871	1,556	130	1,686
Tishomingo	....	....	....	....	....	....	725	....	....	....	....	....	....	....	....	....	1,328	965	1,516	73	1,589
Tunica	....	....	....	....	....	....	144	261	100	....	....	....	361	234	112	346	440	154	517	106	623
Union	169	303	18	....	411	....	579	862	1,152	....	....	....	2,014	1,244	691	1,935	2,266	606	2,336	354	2,690
Warren	973	4	7	804	5	11	508	1,368	351	6	91	....	1,816	1,254	553	1,807	1,014	508	1,986	201	2,187
Washington	....	....	....	....	....	....	458	....	M M	....	....	....	....	....	....	....	1,173	468	1,738	397	2,135
Wayne	Con.	....	Con.	....	....	....	623	....	M M	....	....	....	....	....	Con.	....	1,202	816	1,656	147	1,803
Webster	....	....	....	....	....	....	946	....	....	....	....	....	....	....	....	....	1,120	1,429	1,720	151	1,871
Wilkinson	....	....	....	....	....	....	270	121	430	249	....	....	800	494	277	771	839	270	961	124	1,085
Winston	25	688	605	37	89	24	739	809	439	....	....	....	1,249	633	621	1,254	1,586	806	1,450	230	1,680
*Yalobusha	....	....	....	....	....	....	930	533	356	....	....	....	889	651	292	943	1,858	930	1,860	517	2,377
*Yazoo	....	....	....	....	....	....	425	....	....	....	....	....	....	....	....	....	2,250	425	1,880	66	1,946

[fol. 668] POPULATION 1890, AND REGISTERED VOTE 1896

COUNTIES.	White Pop. 1890.	Colored Pop. 1890.	Tot. Pop. 1890.	White Males Over 21 Years.	Colored Males Over 21 Years.	Total White and Col. Males Over 21.	Registered White Vote 1896.	Registered Colored Vote 1896.	Total Registered Vote 1896.	Voting Precincts.
Adams	6,128	19,903	26,031	1,620	4,009	5,629	839	342	1,181	8
Alcorn	9,605	3,510	13,115	1,994	656	2,550	1,539	116	1,655	13
Amite	7,600	10,598	18,198	1,645	1,903	2,548	1,443	207	1,650	10
Attala	12,742	9,471	22,213	2,701	1,691	4,392	1,700	300	2,000	15
Benton	5,665	4,920	10,585	1,230	877	2,107	938	174	1,112	12
Bolivar	3,222	26,758	29,980	1,246	7,212	8,458	460	219	679	20
Calhoun	11,276	3,412	14,688	2,229	619	2,264	1,523	103	1,626	15
Carroll	8,161	10,612	18,773	1,788	1,965	3,753	2,247	493	2,740	8
Chickasaw	8,491	11,400	19,891	2,796	2,110	4,906	1,300	300	1,600	13
Choctaw	8,208	2,639	10,847	1,666	445	2,111	1,620	330	1,950	12
Claiborne	3,533	10,983	14,516	836	2,155	3,091	850	122	972	5
Clarke	7,716	8,110	15,826	1,543	1,356	2,909	1,658	33	1,691	12
Clay	5,624	12,983	18,607	1,325	2,547	3,872	1,000	130	1,130	11
Coahoma	2,445	16,097	18,342	800	4,169	4,969	650	280	930	14
Copiah	14,632	15,601	30,233	3,073	2,884	5,957	2,435	180	2,615	22
Covington	5,319	2,980	8,299	1,053	487	1,540	1,152	359	1,511	9
DeSoto	6,957	17,226	24,183	1,640	3,547	5,187	1,513	165	1,678	15
Franklin	5,484	4,940	10,424	1,171	860	2,057	970	103	1,073	11
Greene	2,936	970	3,906	614	188	802	759	75	834	9
Grenada	3,896	11,078	14,974	952	2,085	3,037	788	303	1,091	9
Hancock	5,770	2,548	8,318	1,296	577	1,873	679	64	743	10
Harrison	9,163	3,318	12,481	2,030	735	3,765	1,382	199	1,581	13
Hinds	10,892	28,387	39,279	2,700	5,566	8,266	3,324	169	3,493	21
Holmes	7,084	23,886	30,970	1,712	4,750	6,462	1,593	421	2,014	18
Issaquena	736	11,582	12,318	249	2,720	2,969	169	99	268	7
Itawamba	10,723	985	11,708	2,166	173	2,339	1,996	73	2,069	18
Jackson	7,814	3,437	11,251	1,688	766	2,454	2,200	400	2,600	16
Jasper	7,368	7,417	14,785	1,487	1,256	2,743	1,304	72	1,376	17
Jefferson	3,589	15,358	18,947	846	2,810	3,656	996	407	1,403	12
Jones	7,082	1,251	8,333	1,346	289	1,635	1,530	108	1,638	16
Kemper	7,869	10,092	17,961	1,654	1,751	3,405	1,820	243	2,063	17
Lafayette	11,700	8,853	20,553	2,443	1,672	4,115	2,822	418	3,240	16
Lauderdale	14,671	14,990	29,661	3,507	2,914	6,421	2,895	386	3,281	27
Lawrence	6,240	6,078	12,318	1,246	957	2,203	1,156	478	1,634	13
Leake	9,350	5,453	14,803	1,907	973	2,880	2,260	332	2,592	19
Lee	12,510	7,520	20,040	2,682	1,422	4,104	1,961	377	2,338	16
Leflore	2,597	14,272	16,869	893	3,494	4,387	454	42	496	10
Lincoln	10,325	7,587	17,912	2,133	1,412	3,545	1,842	502	2,344	13
Lowndes	6,009	21,038	27,047	1,437	4,412	5,849	1,270	98	1,368	8
Madison	6,031	21,290	27,321	1,428	3,942	5,370	1,150	125	1,275	11
Marion	6,530	3,002	9,532	1,314	542	1,856	1,520	420	1,940	15
Marshall	9,731	16,312	26,043	2,170	3,039	5,207	2,067	416	2,483	20
Monroe	12,109	18,621	30,730	2,809	3,582	6,391	2,564	270	2,834	18
Montgomery	7,448	7,011	14,459	1,660	1,254	2,914	2,005	311	2,316	10
Neshoba	8,351	2,795	11,146	1,641	491	2,132	1,648	205	1,853	13
Newton	10,119	6,506	16,625	2,096	1,162	3,258	1,898	56	1,954	14
Noxubee	4,709	22,629	27,338	1,075	4,312	5,387	988	39	1,027	14

[fol. 669] Population 1890, and Registered Vote 1896 (continued)

Counties.	White Pop. 1890.	Colored Pop. 1890.	Total Pop. 1890.	White Males Over 21 Years.	Colored Males Over 21 Years.	Total White and Col. Males Over 21.	Registered White Vote 1896.	Registered Colored Vote 1896.	Total Registered Vote 1896.	Voting Precincts.
Oktibbeha	5,759	11,935	17,694	1,289	2,141	3,430	1,419	117	1,536	11
Panola	9,248	17,729	26,977	2,062	3,442	5,504	2,217	114	2,331	12
Pearl River	2,301	656	2,959	478	146	624	432	80	512	11
Perry	4,582	1,912	6,494	1,013	410	1,423	1,000	*112	1,112	13
Pike	10,581	10,622	21,203	2,390	1,829	4,219	2,282	195	2,477	13
Pontotoc	10,585	4,355	14,940	2,201	777	2,978	1,830	247	2,077	13
Prentiss	10,833	2,846	13,679	2,227	532	2,759	1,598	155	1,753	9
Quitman	894	2,392	3,286	285	587	872	217	142	359	5
Rankin	7,507	10,415	17,922	1,639	1,825	3,464	1,689	270	1,959	14
Scott	7,000	4,740	11,740	1,438	866	2,304	1,321	261	1,582	15
Sharkey	1,223	7,159	8,382	378	1,682	2,060	345	51	398	8
Simpson	6,229	3,909	10,138	1,191	663	1,854	1,354	160	1,514	9
Smith	8,924	1,711	10,635	1,679	284	1,963	1,883	230	2,113	10
Sunflower	2,530	6,854	9,384	712	1,810	2,522	888	96	984	15
Tallahatchie	5,154	9,207	14,631	1,161	1,944	3,105	1,540	245	1,785	13
Tate	8,495	10,758	19,253	1,853	2,001	3,854	1,723	378	2,101	13
Tippah	10,026	2,925	12,951	2,053	500	2,553	1,555	130	1,685	11
Tishomingo	8,311	991	9,302	1,716	177	1,893	1,336	49	1,385	10
Tunica	1,259	10,899	12,158	437	2,797	3,234	312	167	479	5
Union	11,608	3,998	15,606	2,424	716	3,140	1,835	200	2,035	14
Warren	8,803	24,361	33,164	2,471	5,552	8,023	1,537	293	1,830	15
Washington	4,838	35,576	40,414	1,700	9,103	10,803	1,317	332	1,649	9
Wayne	5,799	4,018	9,817	1,154	719	1,873	1,125	175	1,300	17
Webster	9,080	2,980	12,060	1,837	513	2,347	1,478	141	1,619	14
Wilkinson	3,962	13,630	17,592	928	2,412	3,340	912	117	1,029	15
Winston	6,987	5,102	12,089	1,469	857	2,326	1,236	130	1,366	10
Yalobusha	7,683	8,946	16,629	1,817	1,721	2,538	1,860	517	2,377	12
Yazoo	8,690	27,704	36,394	1,965	5,697	7,662	1,880	66	1,946	17

*—The white and colored registered vote of Perry is estimated, the total vote being 1,112.

Recapitulation.

White Population, Census 1890	544,851
Colored Population, 1890	744,749
Total Population 1890	1,289,600
Males	649,687
Females	639,913
Total Natives	1,281,646
Total Foreign	7,952
Native White Males Over 21 Years	115,771
Foreign White Males Over 21 Years	4,841
Native Colored Males Over 21 Years	150,469
Total Males Over 21 Years	271,080
Total population, 1897, estimated on the basis of increase from 1880 to 1890 (13.96 per cent)	1,406,553

[fol. 670] Part I Registration Statistics by County

Source: Counts made in Poll Books and Registration Books

January 1, 1954

Judicial Districts	Whites over 21	Whites Registered	%	Negroes over 21	Negroes Registered	%
Northern District						
Delta Division						
#2 Coahoma	8,409	3,505	42	19,136	699	3.6
#4 Panola	8,139	4,676	58	8,628	2	.023
#5 Quitman	5,186	3,160	60.9	7,844	208	2.6
#8 Tunica	2,251	1,440	64	9,123	3	.033
Greenville Division						
#11 Leflore	10,331	4,328	42	17,893	243	1.3
#13 Washington	14,074	5,453	38.8	25,823	1,188	4.6
Western Division						
(none)						
Eastern Division						
#32 Lowndes	11,667	4,858	41.6	9,177	30	.33
Southern District						
Western Division						
#43 Warren	12,756	7,604	60	12,312	1,667	13.5
#44 Wilkinson	2,626	1,619	61	4,558	32	.7
#45 Yazoo	8,024	4,236	54	11,126	139	1.2

[fol. 671] Part I Registration Statistics by County

January 1, 1954

Judicial Districts	Whites over 21	Whites Registered	%	Negroes over 21	Negroes Registered	%
Jackson Division						
#46 Amite	5,162	3,230	63	4,598	2	.04
#47 Copiah	8,827	4,742	54	7,841	8	.1
#48 Franklin	3,956	2,807	71	2,294	138	6.3
#53 Madison	5,606	3,880	69	11,586	279	2.4
#54 Pike	12,147	5,924	48	7,608	76	.1
Eastern Division						
#59 Clarke	6,699	3,435	52	3,849	0	0
Hattiesburg Division						
#67 Covington	5,932	4,973	84	2,354	436	18.5
Southern Division						
#77 George	4,677	2,746	59	618	12	1.9
Totals	135,469	72,616	53.2%	166,368	5,180	3.1%

[fol. 672] Part II Registration Statistics by County

Source: Estimates from 1955 Primary Election Totals and counts made in Poll Books and Registration Books

January 1, 1954

	Whites over 21	Whites Registered	%	Negroes over 21	Negroes Registered	%
Northern District						
Delta Division						
#3 De Soto	4,775	2,732	57	8,013	13	.16
#6 Tallahatchie	6,299	4,569	73	9,235	1	.01
Greenville Division						
(none)						
Western Division						
#14 Benton	2,780	2,152	77	1,749	40	.4
#16 Grenada	5,590	5,258	94	4,980	92	1.85
#18 Marshall	4,406	3,180	72	8,210	14	.17
Eastern Division						
(none)						
Southern District						
Western Division						
#39 Claiborne	1,929	1,450	75.1	4,728	126	2.7
Jackson Division						
#49 Hinds	52,015	23,813	45.7	35,021	2,705	7.7
#50 Holmes	5,569	3,616	64.9	11,468	8	.07
#51 Leake	7,409	7,238	98	3,835	94	2.45
#55 Rankin	9,829	5,711	58	7,295	33	.45

[fol. 673] Part II Registration Statistics by County

January 1, 1954

	Whites over 21	Whites Registered	%	Negroes over 21	Negroes Registered	%
Eastern Division						
#61 Kemper	3,816	3,041	79	4,023	10	.2
#62 Lauderdale	26,598	11,850	45	12,965	1,282	9.9
#64 Newton	8,727	4,511	52	3,687	79	2.1
Hattiesburg Division						
#68 Forrest	19,708	9,123	46	7,406	7	.09
#69 Greene	3,491	750	21	758	3	.4
#70 Jefferson Davis	3,847	2,842	74	3,923	891	22
#72 Lamar	6,115	2,041	33	1,118	0	0
#74 Marion	9,004	3,147	35	4,103	66	1.6
#76 Walthall	4,735	3,845	81	3,017	0	0
Southern Division						
(none)						
Total	186,642	100,869	54.0%	135,534	5,464	4,0%

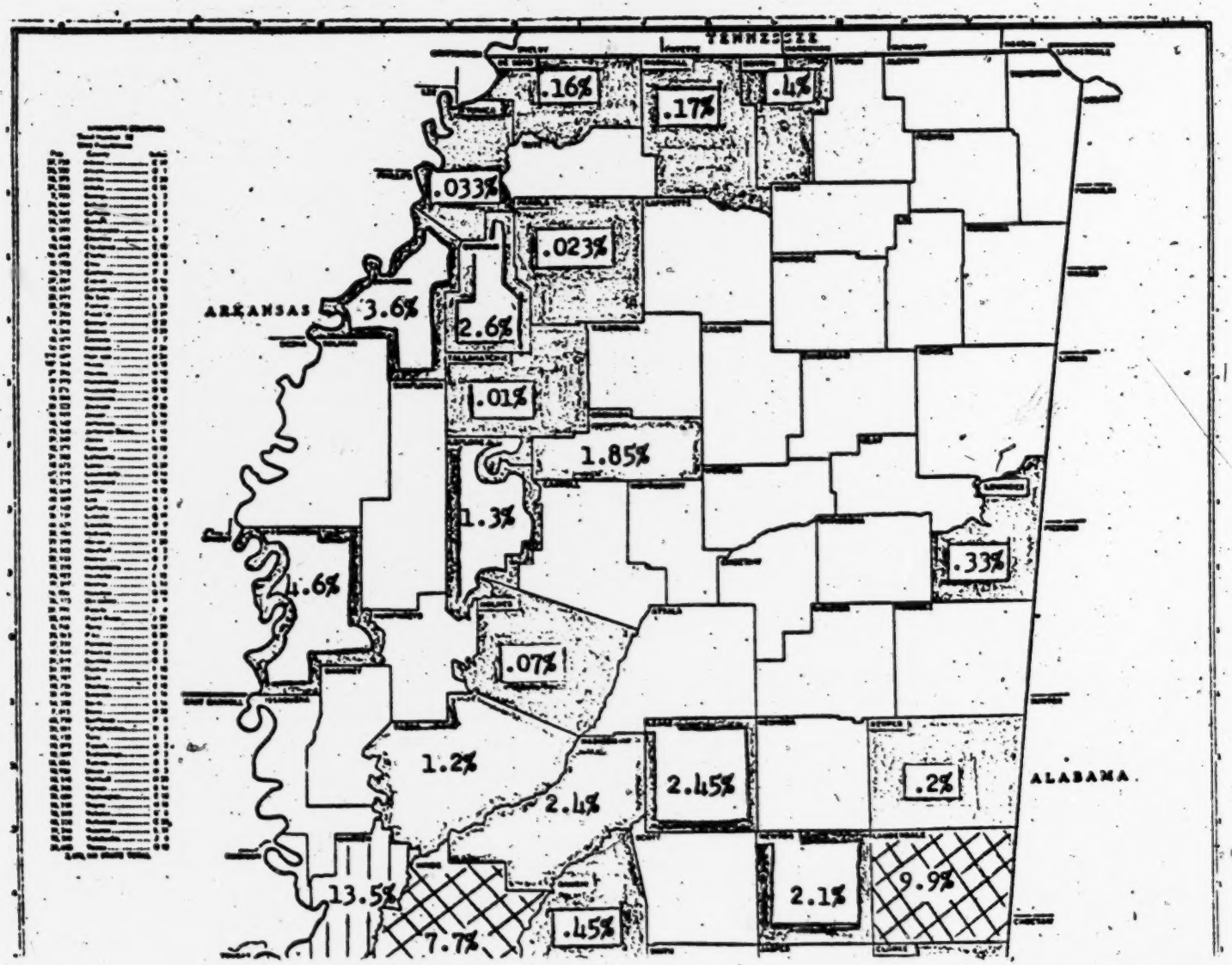
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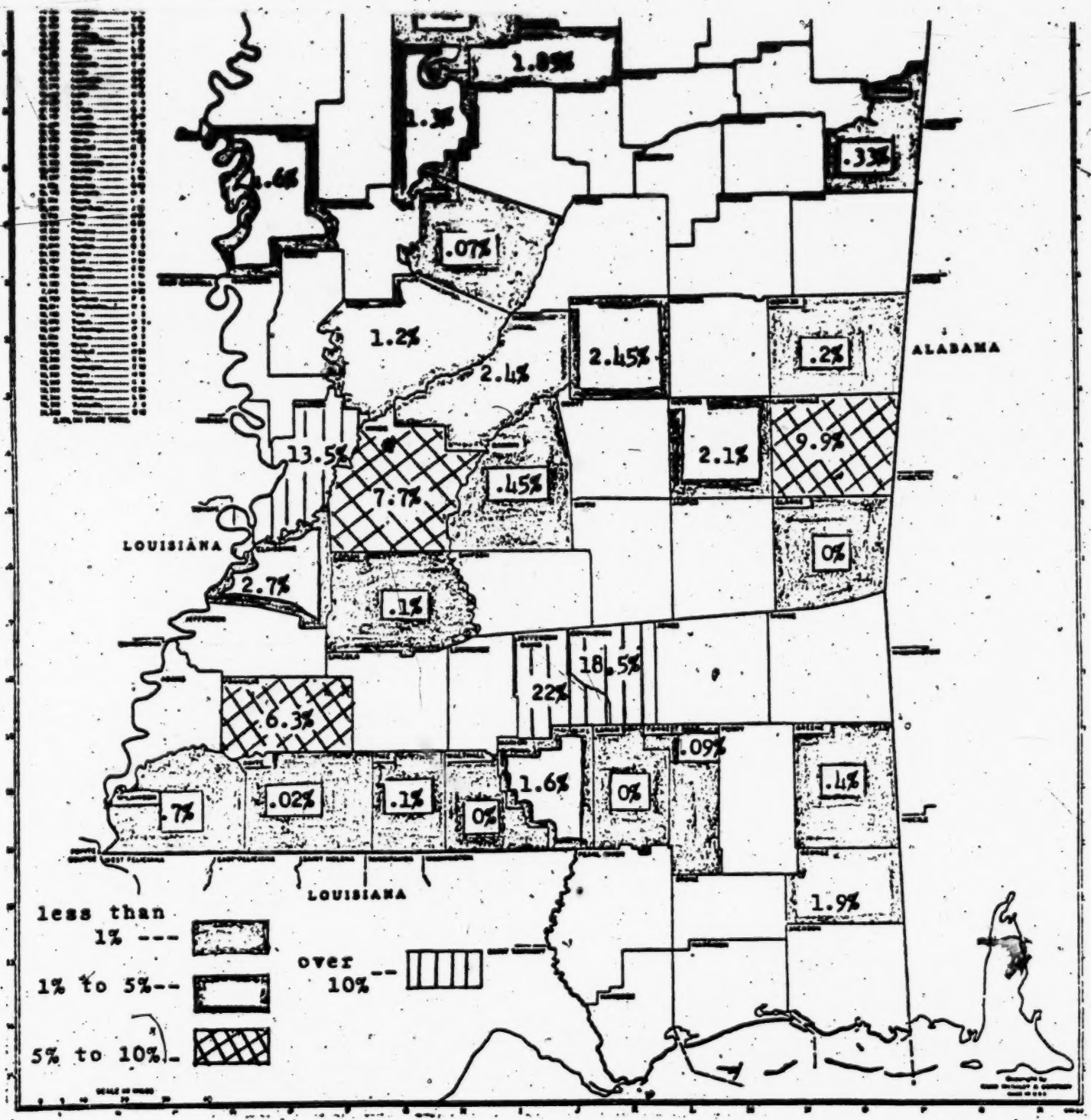
Parts I and II—Registration Statistics by County

Percentage of Negroes Registered

January 1, 1954

(37 of 82 Counties)




1.8%
1.3%
.6%
.3%
.07%
1.2%
2.4%
2.45%
.2%
ALABAMA
13.5%
7.7%
.45%
2.1%
9.9%
LOUISIANA
0%
2.7%
.1%
18.5%
22%
6.3%
.09%
.7%
.02%
.1%
0%
1.6%
0%
.4%
LOUISIANA
1.9%
less than 1% ---
1% to 5%--
5% to 10%--
over 10%--

[fol. 675] Part I Registration Statistics by County

Source: Counts Made in Poll Books and Registration Books March 24, 1955

Judicial Districts	Whites over 21	Whites Registered	%	Negroes over 21	Negroes Registered	%
Northern District						
Delta Division						
#2 Coahoma	8,409	3,929	47	19,136	867	4.5
#4 Panola	8,139	5,344	66	8,628	2	.02
#5 Quitman	5,186	3,571	68.8	7,844	318	4
#8 Tunica	2,251	1,769	78	9,123	29	.32
Greenville Division						
#11 Leflore	10,331	5,563	54	17,893	400	2.2
#13 Washington	14,074	6,082	42.5	25,823	1,478	5.7
Western Division						
(None)						
Eastern Division						
#32 Lowndes	11,667	5,133	44	9,177	151	1.6
Southern District						
Western Division						
#43 Warren	12,756	8,408	66	12,312	2,088	16.3
#44 Wilkinson	2,626	1,813	69	4,558	43	.9
#45 Yazoo	8,024	4,865	60	11,126	208	1.8
[fol. 676]						
Jackson Division						
#46 Amite	5,162	3,977	77	4,598	2	.04
#47 Copiah	8,827	5,073	57.5	77,841	23	.29
#48 Franklin	3,956	3,358	85	2,294	229	10
#53 Madison	5,606	4,302	77	11,586	476	3.8
#54 Pike	12,147	6,683	55	7,608	100	.13
Eastern Division						
#59 Clarke	6,699	3,856	58	3,849	0	0
Hattiesburg Division						
#67 Covington	5,932	4,973	84	2,354	665	28
Southern Division						
#77 George	4,677	3,141	67	618	12	1.9
Totals	136,469	81,830	59.9	166,368	7,091	4.3

[fol. 677] Part II Registration Statistics by County

Source: Estimates from 1955 Primary Election Totals and Counts Made in Poll Books and Registration Books

March 24, 1955

Judicial Districts	Whites over 21	Whites* Registered	%	Negroes over 21	Negroes Registered	%
Northern District						
Delta Division						
#3 DeSoto	4,775	3,210	67	8,013	13	.16
#6 Tallahatchie	6,299	4,569	73	9,235	1	.01
Greenville Division						
(None)						
Western Division						
#14 Benton	2,780	2,266	81	1,749	40	.23
#16 Granada	5,599	3,467	62	4,980	130	2.6
#18 Marshall	4,406	3,403	77	8,210	20	.24
Eastern Division						
(None)						
Southern District						
Western Division						
#39 Claiborne	1,929	1,450	75.1	4,728	140	2.9
Jackson Division						
#49 Hinds	52,015	22,971	44.1	35,024	3,547	10.1
#50 Holmes	5,569	3,616	64.9	14,408	8	.07
#51 Leake	7,409	5,002	68	3,835	185	4.8
#55 Rankin	9,829	5,711	58	7,295	43	.59
[fol. 678]						
Eastern Division						
#6 Kemper	3,816	3,623	95	4,023	25	.6
#62 Lauderdale	26,598	11,850	45	12,965	1,542	12
#64 Newton	8,727	4,874	56	3,687	100	2.7
Hattiesburg Division						
#68 Forrest	19,708	9,123	46	7,406	12	.1
#69 Greene	3,491	3,094	88	758	43	5.7
#70 Jefferson Davis	3,847	2,842	74	3,923	1,246	32
#72 Lamar	6,115	4,385	72	1,118	0	0
#74 Marion	9,004	6,705	74	4,103	312	7.7
Southern Division						
(None)						
Totals	186,642	106,006	56.7	135,534	7,407	5.5

*Total votes cast for all candidates for governor in the First Primary, August, 1955 less the number of registered Negroes.

[fol. 679] Part III Registration Statistics by County

Source: Estimates from Master's Thesis by J. F. Barnes, University of Mississippi, 1955, for Negro Registration and 1955 Primary Election Totals

August, 1955

Judicial Districts	Whites over 21	Whites* Registered	%	Negroes over 21	Negroes Registered	%
Northern District						
Delta Division						
#7 Tate	4,506	3,134	69.5	2,989	0	0
Greenville Division						
(None)						
Western Division						
#15 Calhoun	8,122	5,332	65.6	1,893	0	0
#17 Lafayette	8,957	4,496	50.1	3,844	105	2.7
#20 Pontotoc	9,608	6,274	65.2	1,847	6	.32
#21 Tippah	8,037	5,360	66.9	1,603	144	8
#22 Union	10,008	6,644	66.3	1,904	67	3
#23 Webster	5,366	4,401	82	1,243	3	.2
#24 Yalobusha	5,271	3,384	64.2	3,142	9	.3
Eastern Division						
#25 Alcorn	13,811	8,049	58.2	2,225	78	3.5
#26 Attala	9,011	5,412	60	5,179	34	.65
#27 Chickasaw	6,305	4,463	70.7	4,016	0	0
#28 Choctaw	4,469	3,211	71.8	1,412	19	1.3
#30 Itawamba	9,298	5,905	63.5	470	42	8.9
#31 Lee	17,082	10,455	61.2	5,531	97	1.7
[fol. 680]						
#33 Monroe	13,667	7,645	55.9	6,734	18	.26
#34 Oktibbeha	8,042	4,406	54.7	5,409	138	2.5
#35 Prentiss	10,103	6,367	63	1,170	18	1.5
#36 Tishomingo	8,492	4,980	58.6	463	17	4
#37 Winston	7,561	4,994	66	4,162	30	.7
Southern District						
Western Division						
#38 Adams	10,097	4,974	49.2	9,338	641	6.8
#40 Issaquena	800	665	83.1	1,790	0	0
#41 Jefferson	1,901	1,675	88.1	4,304	0	0
#42 Sharkey	2,124	1,602	75.4	4,533	1	.02
Jackson Division						
#52 Lincoln	11,087	7,425	66.9	4,507	516	11.4
#56 Scott	7,247	5,293	73	4,329	15	.34
#57 Simpson	8,486	6,083	71.6	3,351	61	.18
#58 Smith	7,363	5,778	78.4	1,400	6	.4
Eastern Division						
#60 Jasper	5,470	4,228	77.2	4,313	9	.2
#63 Neshoba	10,810	6,975	64.5	2,984	8	.26
#65 Noxubee	3,134	2,426	77.4	6,764	0	0
#66 Wayne	5,854	4,530	77.3	2,857	0	0

*Total votes cast for candidates for governor in the First Primary, August 1955, less the number of registered Negroes.

[fol. 681]

Judicial Districts	Whites over 21	Whites Registered	%	Negroes over 21	Negroes Registered	%
Hattiesburg Division						
#71 Jones	24,617	12,506	50.8	8,046	871	10.8
#73 Lawrence	4,425	3,409	77	2,229	268	12.
#75 Perry	3,707	2,908	78.4	1,136	58	5.1
Southern Division						
#78 Hancock	5,769	5,128	88.8	1,131	449	39.6
#79 Harrison	42,170	16,695	39.5	7,858	1,569	19.9
#80 Jackson	14,178	8,162	57.5	3,752	900	23.9
#81 Pearl River	9,084	6,511	71.6	2,454	0	0
#82 Stone	2,799	2,315	82.7	746	25	3.
Totals	348,838	214,200	61.4	133,057	6,222	4.7

[fol. 682] Part IV Registration Statistics by County

Source: Estimates from 1955 Primary Election Totals and Interviews of Registrars and Deputy Registrars by Federal Bureau of Investigation in September 1955.

Judicial Districts	Whites over 21	Whites Registered	%	Negroes over 21	Negroes Registered	%
Northern District						
Delta Division						
#1 Bolivar	11,144.	4,266	38.2	21,705	511	2.3
Greenville Division						
#9 Carroll	3,880	2,887	74.4	3,958	1	.025
#10 Humphries	3,806	2,466	64.7	7,712	38	.49
#12 Sunflower	10,037	4,352	43.4	18,949	181	.95
Western Division						
#19 Montgomery	5,039	4,050	80.3	2,978	10	.34
Eastern Division						
#20 Clay	4,784	3,521	73.5	4,922	12	.24
Total	38,690	21,542	55.7	60,224	753	1.3

[fol. 683] State Wide Statistics

1955

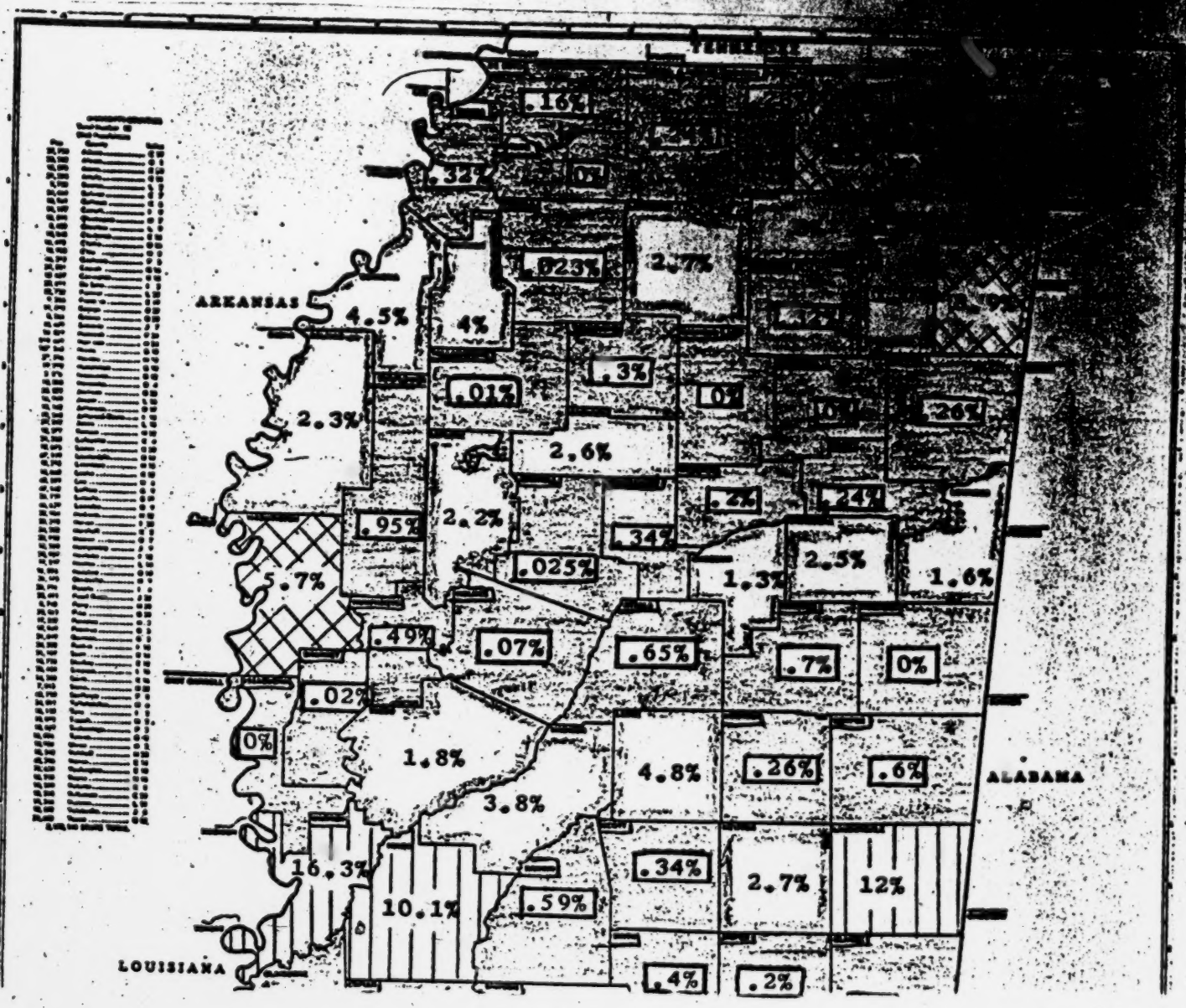
Total whites over 21	710,639
Total whites registered	423,456
%	59.6%
Total Negroes over 21	495,183
Total Negroes registered	21,502
%	4.3%

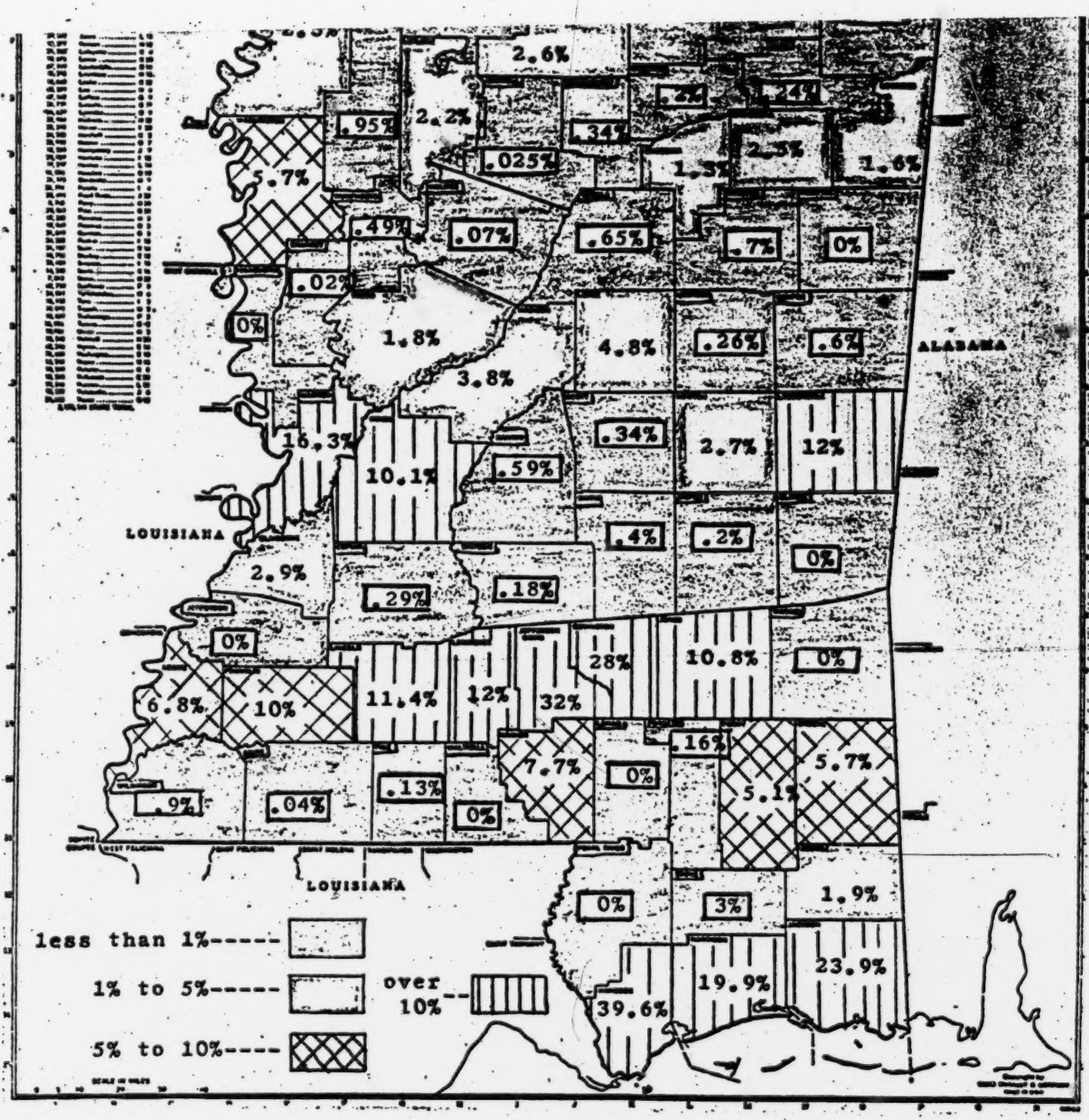
[fol. 684]

Parts I Through IV—Registration Statistics by County

Percentage of Negroes Registered

March 24, 1955




2.6%
.95%
2.2%
.34%
.24%
.025%
1.3%
2.3%
1.6%
5.7%
.49%
.07%
.65%
.7%
0%
.02%
0%
1.8%
4.8%
.26%
.6%
ALABAMA
3.8%
16.3%
10.1%
.34%
2.7%
12%
.59%
LOUISIANA
.4%
.2%
0%
2.9%
.29%
.18%
0%
28%
10.8%
0%
6.8%
10%
11.4%
12%
32%
.16%
7.7%
0%
5.1%
5.7%
.9%
.04%
.13%
0%
LOUISIANA
0%
3%
1.9%
23.9%
19.9%
39.6%
less than 1%-----
1% to 5%-----
5% to 10%----
over 10%--

R-54-15

[fol. 685] Part I Registration Statistics by County

Source: Counts made in Poll Books and Registration Books

January 1, 1960

County	Whites over 21	Whites Registered	%	Negroes over 21	Negroes Registered	%
Northern District						
Delta Division						
#2 Coahoma	8,708	5,033	57	14,004	980	7
#4 Panola	7,639	4,755	62	7,250	1	.014
#5 Quitman	4,176	3,574	85.5	5,673	395	6.9
#8 Tunica	2,011	2,253	100	5,822	40	.69
Greenville Division						
#11 Leflore	10,274	6,925	68	13,567	269	2
#13 Washington	19,837	9,847	49	20,619	1,547	7.5
Western Division						
#18 Marshall	4,342	4,030	93	7,168	23	.32
Eastern Division						
#32 Lowndes	16,460	7,181	43.6	8,362	67	.8
Southern District						
Western Division						
#39 Claiborne	1,688	1,440	85.3	3,969	15	.37
#44 Wilkinson	2,330	2,246	96.0	4,420	53	1.3
#45 Yazoo	7,598	6,274	83.0	8,719	256	2.9
Jackson Division						
#46 Amite	4,449	3,600	81.0	3,560	1	.028
#47 Grenada	8,153	6,600	81.0	6,407	20	.31
[fol. 686]						
#48 Franklin	3,403	3,528	100	1,842	234	12.7
#53 Madison	5,622	4,568	81	10,366	120	1.1
#55 Rankin	13,246	10,000	75	6,944	66	.95
Eastern Division						
#59 Clarke	6,072	4,611	77	2,998	0	0
#64 Newton	8,014	5,003	62	3,018	103	2.8
Hattiesburg Division						
#74 Marion	8,997	8,435	95	3,630	339	9.3
#76 Walthall	4,736	3,903	83	2,490	0	0
Total	147,765	103,806	70.2	140,528	4,485	3.2

[fol. 687] Part II Registration Statistics by County

Source: Estimates From 1959 Primary Election Totals and Counts Made in Poll Books and Registration Books

January 1, 1960

County	Whites over 21	Whites Registered	%	Negroes over 21	Negroes Registered	%
Northern District						
Delta Division						
#3 DeSoto	5,338	3,545	66	6,246	10	.16
#6 Tallahatchie	5,099	4,334	85	6,483	1	.01
Greenville Division						
(None)						
Western Division						
#14 Benton	2,514	2,009	80	1,419	42	.3
#16 Grenada	5,792	4,755	83	4,323	134	3.1
Eastern Division						
(None)						
Southern District						
Western Division						
(None)						
Jackson Division						
#50 Holmes	4,773	3,530	74	8,757	8	.09
#51 Leake	6,754	4,945	73	3,397	108	3.2
Eastern Division						
#61 Kemper	3,113	3,213	100	3,221	29	.9
[fol. 688]						
Hattiesburg Division						
#67 Covington	5,329	3,640	68	2,032	687	34
#68 Forrest	22,431	10,385	46	7,495	12	
#69 Greene	3,518	3,154	90	859	46	5.
#70 Jefferson Davis	3,629	3,085	85	3,222	63	1
#72 Lamar	6,489	4,684	76	1,071	0	0
Southern Division						
#77 George	5,276	3,678	70	580	7	1
Total	880,005	54,957	68.6	49,105	1,147	2

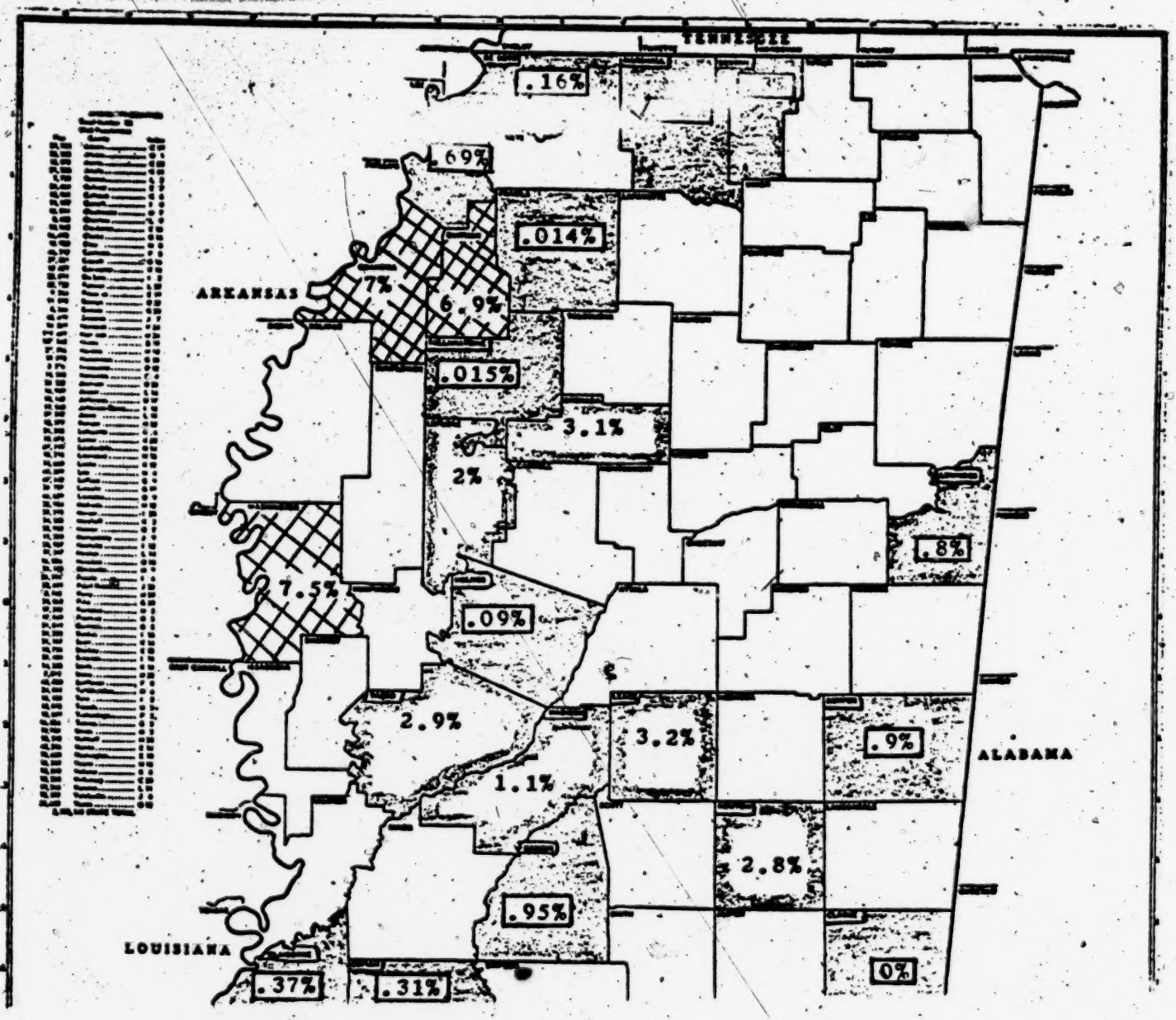
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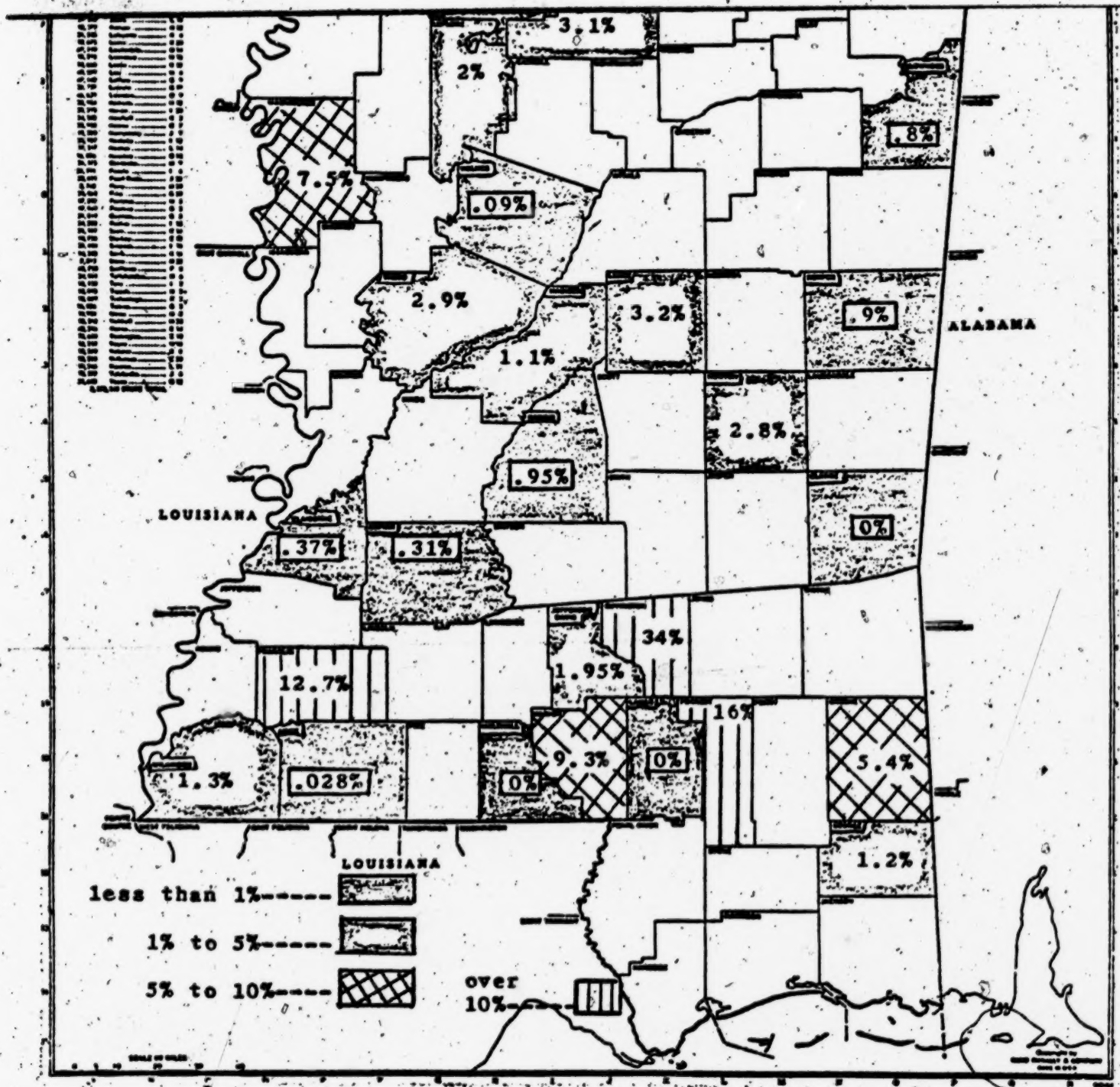
Parts I and II—Registration Statistics by County

Percentage of Negroes Registered

-January 1, 1960

(33 of 82 Counties)




3.1%
2%
.8%
7.5%
.09%
2.9%
3.2%
.9%
ALABAMA
1.1%
2.8%
.95%
LOUISIANA
.37%
.31%
0%
34%
1.95%
12.7%
16%
1.3%
.028%
0%
9.3%
0%
5.4%
1.2%
LOUISIANA
less than 1%-----
1% to 5%-----
5% to 10%----
over 10%----

[fol. 690] Part I Registration Statistics by County

Source: Counts made in Poll Books and Registration Books

June 1, 1962

County	Whites over 21	Whites Registered	%	Negroes over 21	Negroes Registered	%
Northern District						
Delta Division						
#2 Coahoma	8,708	6,380	73	14,004	1,061	7.6
#4 Panola	7,639	5,309	69	7,250	2	.028
#5 Quitman	4,176	2,991	71.6	5,673	436	6.6
#8 Tunica	2,011	1,436	71	5,822	42	.72
Greenville Division						
#11 Leflore	10,274	7,168	70	13,657	268	2
#13 Washington	19,837	10,838	54.5	20,619	1,762	8.6
Western Division						
#18 Marshall	4,342	4,162	96	7,168	57	.8
Eastern Division						
#32 Lowndes	16,460	8,312	50.5	8,362	95	1.1
Southern District						
Western Division						
#39 Claiborne	1,688	1,440	85.3	3,969	15	.37
#44 Wilkinson	2,340	2,438	100.0	4,120	60	1.5
#45 Yazoo	7,598	7,130 9	3.0	8,719	256	2.9
Jackson Division						
#46 Amite	4,449	3,532	80.0	3,560	1	.028
#47 Copiah	8,153	7,533	92.0	6,407	25	.39
[fol. 691]						
#48 Franklin	3,403	3,731	100	1,842	236	12.8
#49 Hinds	67,836	56,363	80	36,138	4,756	13.2
#53 Madison	5,622	5,458	97	10,366	121	1.1
#55 Rankin	13,246	12,000	90	6,944	94	1.35
Eastern Division						
#59 Clarke	6,072	5,000	83	2,998	1	.03
#64 Newton	8,014	5,700	71	3,018	104	2.8
Hattiesburg Division						
#74 Marion	8,997	9,540	100	3,630	363	10
#76 Walthall	4,736	4,219	89	2,490	2	.08
Totals	215,593	170,680	79.2	176,666	9,757	5.5

[fol. 692] Part II Registration Statistics by County

Source: Estimates from 1959 Primary Election Totals and Counts Made in Poll Books and Registration Books

June 1, 1962

County	Whites over 21	Whites Registered	%	Negroes over 21	Negroes Registered	%
Northern District						
Delta Division						
#3 DeSoto	5,338	4,030	75	6,246	11	.18
#6 Tallahatchie	5,099	4,330	85	6,483	5	.07
Greenville Division						
(None)						
Western Division						
#14 Benton	2,514	2,078	82.5	1,419	30	.21
#16 Grenada	5,792	5,518	95	4,323	135	3.1
Eastern Division						
(None)						
Southern District						
Western Division						
(None)						
Jackson Division						
#50 Holmes	4,773	3,530	74	8,757	8	.09
#51 Leake	6,754	5,927	88	3,397	116	3.4
[fol. 693]						
Eastern Division						
#61 Kemper	3,113	3,224	100	3,221	30	.9
Hattiesburg Division						
#67 Covington	5,329	3,991	75	7,032	202	3.5
#68 Forrest	22,431	12,655	57	7,495	22	.3
#69 Greene	3,518	3,000	85	859	43	5
#70 Jefferson Davis	3,629	3,600	99	3,222	76	2.3
#72 Lamar	6,489	5,593	91	1,071	0	0
Southern Division						
#77 George	5,276	3,510	67	580	10	1.7
Total	80,055	60,986	76.2%	54,104	688	1.2

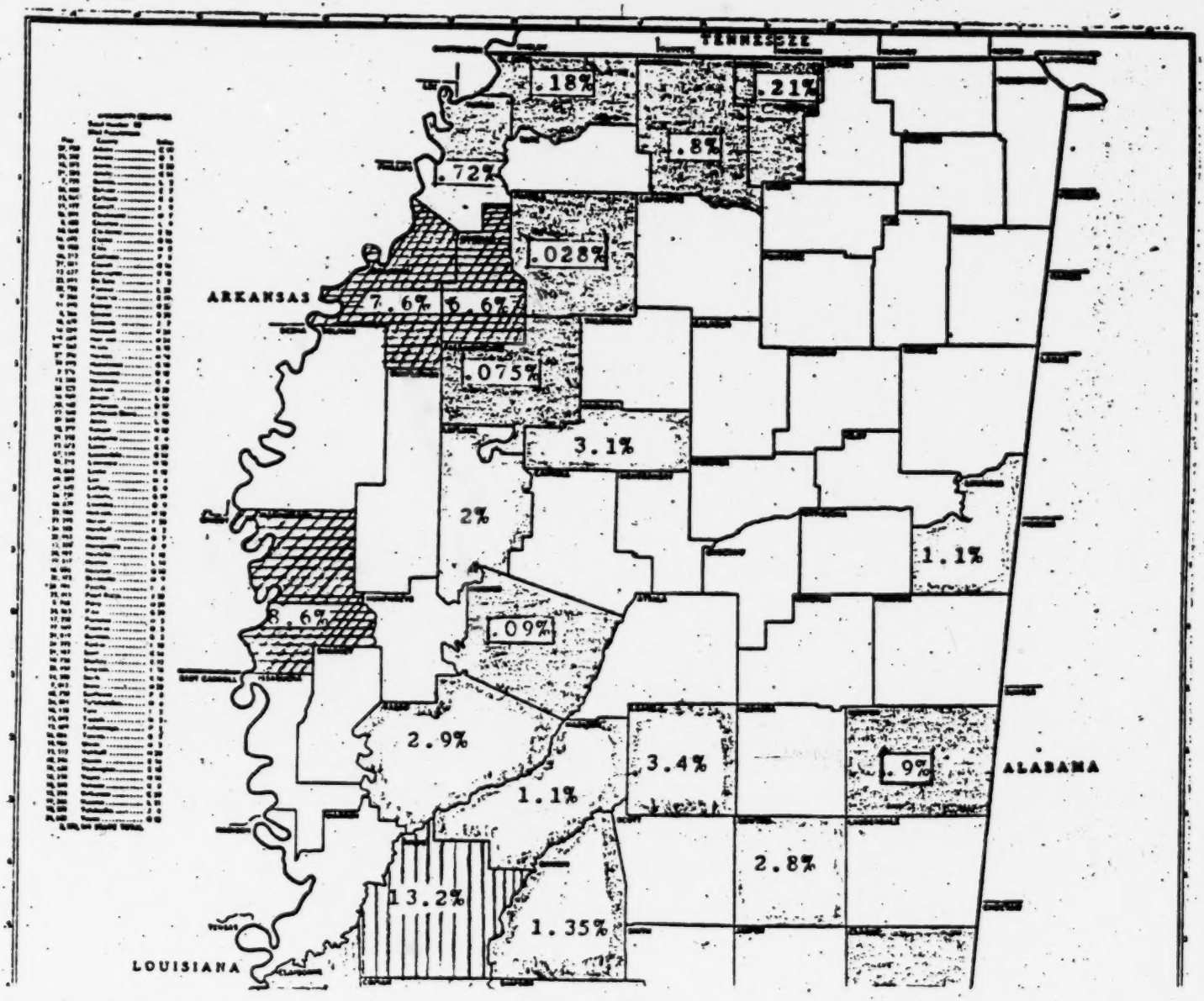
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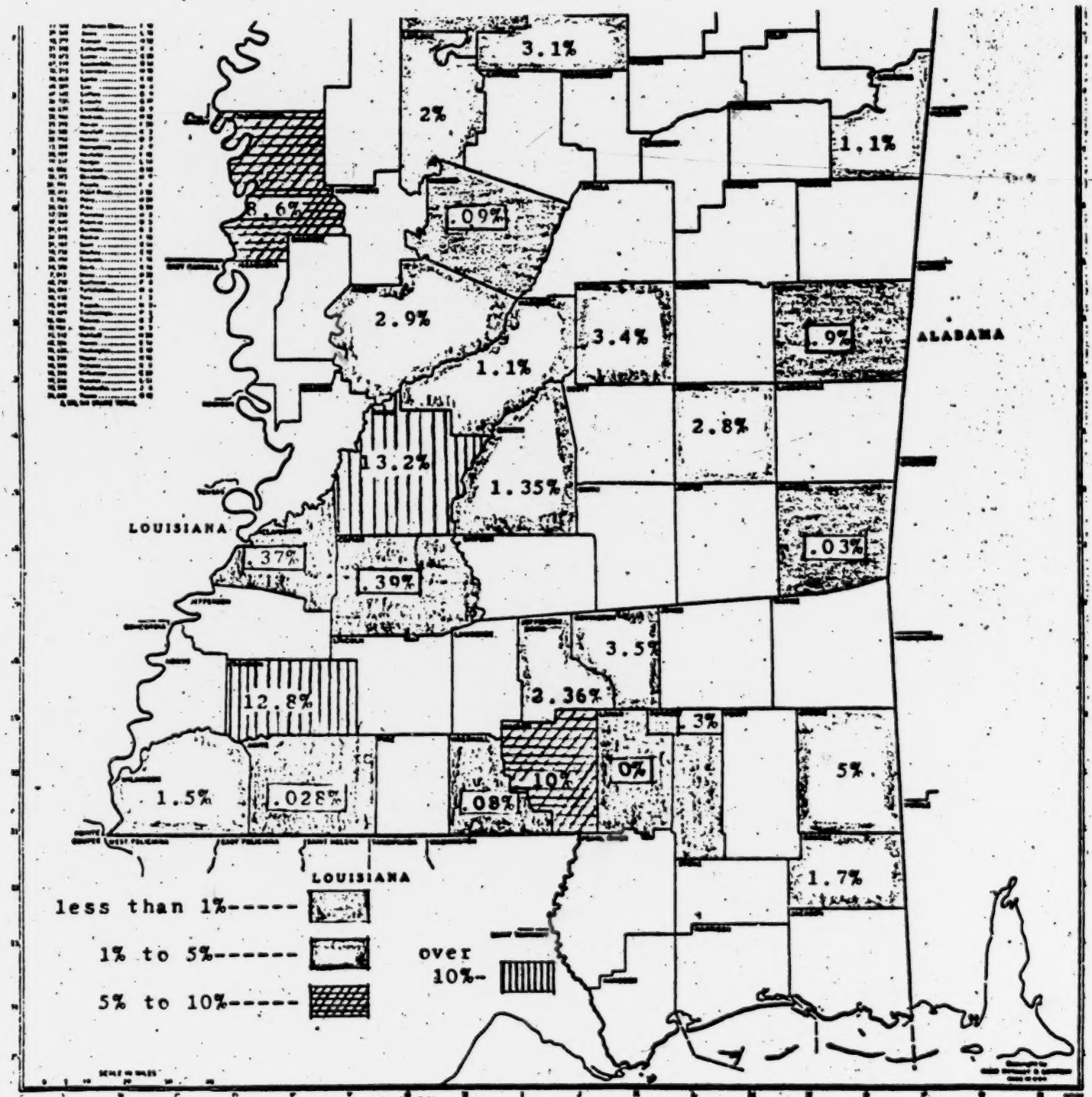
Parts I and II—Registration Statistics by County

Percentage of Negroes Registered

June 1, 1962

(34 of 82 Counties)




3.1%
2%
1.1%
8.6%
.09%
2.9%
3.4%
.9%
ALABAMA
1.1%
2.8%
13.2%
1.35%
LOUISIANA
.37%
.39%
.03%
3.5%
12.8%
2.36%
.3%
5%
1.5%
.028%
.08%
.10%
0%
LOUISIANA
1.7%
less than 1%-----
1% to 5%------
5% to 10%-----
over 10%-

R-54-25

[fol. 695] Coahoma #2

Date Current Registration Began: , 1949

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890	2,445			16,097		
Jan. 1, 1899	990	876	89%	6,388	240	3.8%
Jan. 1, 1954	8,409	3,505	42%	19,136	699	3.6%
Mar. 24, 1955	8,409	3,929	47%	19,136	867	4.5%
Jan. 1, 1960	8,708	5,033	57%	14,004	980	7%
June 1, 1962	8,708	6,380	73%	14,004	1,061	7.6%

Total Votes Cast in First Gubernatorial Primary

1951	4,101	1959	4,634
1955	8,207	1963	5,294

Source and Explanation of Registration Statistics

Race Identification

The current registration books, current poll books, poll tax payers lists and poll tax receipts indicate the race of all persons.

January 1, 1954

Negroes: 699
Source: Current Registration Books

Explanation: All Negroes registered prior to January 1, 1954 were counted. The total includes 149 Negroes from the Friar's Point Precinct. The figures for 1955, 1960 and 1962 include these 149. Only 44 of these 149 voted in the June 5, 1962 election.

[fol. 696] Whites: 3,505
Source: Current Registration Books

Explanation: All whites registered prior to January 1, 1954 were counted. The total excludes whites whose names are crossed out. (Current registration books started in 1949.)

March 24, 1955

Negroes: 867
Source: Current Registration Books

Explanation: All Negroes registered prior to March 24, 1955 were counted. The total excludes Negroes whose names are crossed out in the books.

Whites: 3,929
Source: Current Registration Books

Explanation: All whites registered prior to March 24, 1955 were counted. The total excludes whites whose names are crossed out in the books.

January 1, 1960

Negroes: 980
Source: Current Registration Books and Accepted Application Forms

Explanation: The total number of accepted applications filed by Negroes between March 14, 1955 and January 1, 1960 was added to the registration book figure for March 24, 1955. Race is not shown on these application forms. The race of all applicants was identified by cross checking in the registration books, poll books, poll tax payers lists, and poll tax receipts.

Whites: 5,033
Source: Current Registration Books and Accepted Application Forms

Explanation: The total number of accepted applications filed by whites between March 24, 1955 and January 1, 1960 was added to the registration book figure for March 24, 1955. Race is not shown on the application forms. Race was identified by cross checking in the registration books, poll books, poll tax payers lists and poll tax receipts.

[fol. 697] June 1, 1962

Negroes: 1,061
Source: Current Registration Books and Accepted Application Forms

Explanation: The total number of accepted applications filed by Negroes between January 1, 1960 and June 1, 1962 was added to the January 1, 1960 figure for Negro registration. It is doubtful that 1,061 Negroes were, in fact, registered. Only 320 Negroes voted in the June 5, 1962 election. The explanation for this is that some of the Negroes registered in 1955 had died or moved.

Whites: 6,380
Source: Current Registration Books and Accepted Application Forms

Explanation: The total number of accepted applications filed by whites between January 1, 1960 and June 1, 1962 was added to the January 1, 1960 figure for white registration. The total also includes 612 people who transferred into Coahoma County from other counties between 1955 and July 1962. Race is not shown on the transfer certificates. We infer from the meagerness of Negro registration in other Mississippi counties that nearly all these transfers are white. This can be established conclusively from the records. None of the 612 was included in the January 1, 1960 total as the transfer certificates do not show date of transfer.

General Information

Name of Present Registrar: J. W. Smith
Date Present Registrar Took Office: January 1, 1948
Dates Records Were Photographed:

July and December 1962

Description of Records Photographed:

Current Registration Books for Period: 1949 to 1962
Current Poll Books for Period: 1949 to 1962
Old Registration Books: None
Old Poll Books: None

Application Forms:

Number Made Available:

1,839 accepted applications of white persons
194 accepted applications of Negroes
223 rejected applications (Mostly Negroes)

[fol. 698] Application Forms:

Period of Time They Cover:

March 24, 1955 to June 1, 1962

[fol. 699] De Soto #3

Date Current Registration Began:

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890	1,640			3,547		
Jan. 1, 1899	1,935	1,909	99%	4,001	212	5.3%
Jan. 1, 1954	4,775	2,732	57%	8,013	13	.16%
Mar. 24, 1955	4,775	3,210	67%	8,013	13	.16%
Jan. 1, 1960	5,338	3,545	66%	6,246	10	.16%
June 1, 1962	5,338	4,030	75%	6,246	11	.18%

Total Votes Cast in First Gubernatorial Primary

1951	3,187	1959	3,555
1955	3,223	1963	(incomplete)

Source and Explanation of Registration Statistics

Race Identification

The current registration books indicate race of all electors through March, 1955.

January 1, 1954

Negro: 13
Source: Current Registration Book

Explanation: All Negroes registered prior to January 1, 1954 were counted. Of a total of 19 counted, thirteen were 80 years old or less as of January 1, 1954. Since there is no indication of systematic or accurate elimination from the [fol. 700] registration rolls for death or transfer and none of the Negroes registered were shown on the poll books, those Negroes over 80 years old were not included in this total.

Whites: 2,732
Source: Current Poll Books

Explanation: All persons registered prior to January 1, 1954 were counted except those persons whose names were crossed out. Current poll books were used rather than current registration books which had not been systematically or accurately purged for death or transfer.

March 24, 1955

Negro: 13
Source: Current Registration Books

Explanation: The total number of Negro persons registered as of March 24, 1955 was obtained by subtracting from the 13 Negroes registered as of January 1, 1954 W. M. Richmond who became 80 in 1955 and adding S. R. Williams who registered on February 24, 1954. Since there is no indication of systematic or accurate elimination from the registration rolls for death or transfer and only one Negro person who registered prior to March 24, 1955 appears in the current poll books, those Negro persons over 80 years old were not included in this total.

White: 3,210
Source: Current Registration Books, 1955 Primary Election Figures

Explanation: The minimum number of white persons registered was estimated by subtracting the total number of Negro persons registered on March 24, 1955 from the total number of votes cast for Governor in the first primary in August 1955.

January 1, 1960

Negro: 10
Source: Current Registration Books

Explanation: The total number of Negro persons registered as of January 1, 1960 is reduced from thirteen to ten by the attainment by three of the Negroes registered as of March 24, 1955 of an age greater than 80 years. From inves- [fol. 701] tigation in this county by Department attorneys,

it is plaintiff's belief that no additional Negroes were registered between March 24, 1955 and January 1, 1960.

Whites: 3,545
Source: 1959 Primary Election Figures and Current Registration Books.

Explanation: The minimum number of white persons registered was estimated by subtracting the total number of Negro persons registered on January 1, 1960 from the total number of votes cast for Governor in the first primary in August 1959.

June 6, 1962

Negro: 11
Source: Current Registration Books

Explanation: The total number of Negro persons registered as of January 1, 1960 is increased from ten to eleven as of June 1, 1962 by the addition of Willie J. Plunkett, registered from Nesbitt precinct on January 23, 1962, and Hiram Baptist, registered from Nesbitt precinct on May 22, 1962 and by elimination of one Negro of the original 13 registered as of March 24, 1955, as having become over 80 years of age.*

White: 4,030
Source: Current Poll Books, Primary Election Figures

Explanation: The total number of white persons registered was obtained by counting from the current poll books all persons who registered between January 1, 1960 and June 1, 1962 and whose names were not crossed out, and adding this total of 486 persons to the total votes cast for Governor in the first primary in August 1959. From this total, 4041, was subtracted the 11 Negro persons registered as of June 1, 1962.

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* One Negro, James H. Berry, who registered on December 19, 1935, when he was 46, applied unsuccessfully to register on September 8, 1960, when he was 71.

General Information

Name of Present Registrar: Richard Davis
Date Present Registrar Took Office: January, 1956
Date Records Were Photographed: May 23, 1963
[fol. 702] Description of Records Photographed:

Current Registration Books for Period:

1930 to date of photographing

Current Poll Books for Period: 1959 to date
Old Registration Books: None
Old Poll Books: None
Application Forms :

Number Made Available: 630
Period of Time They Cover:

September 1, 1961 to April 13, 1963

[fol. 703] Panola #4

Date Current Registration Began: , 1932

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890	2,060			3,442		
Jan. 1, 1899	2,253	2,751	100%	4,059	385	9.5%
Jan. 1, 1954	8,139	4,676	58%	8,628	2	.023%
Mar. 24, 1955	8,139	5,344	66%	8,628	2	.023%
Jan. 1, 1960	7,639	4,755	62%	7,250	1	.014%
June 1, 1962	7,639	5,309	69%	7,250	2	.028%

Total Votes Cast in First Gubernatorial Primary

1951	4,604	1959	5,008
1955	4,897	1963	4,856

Source and Explanation of Registration Statistics

Race Identification

Source: Current Poll Books

The old registration and old poll books indicate race of all registrants. Race was also identified from defendant's answer to plaintiff's Request for Admission, U. S. v. Duke, C.A. D-C-45-61 (Tr. 15) (1963), and stipulation between the parties at the time of trial, U.S. v. Duke, C.A. D-C-45-61 (Tr. 16) (1963).

January 1, 1954

Negroes: 2
Source: Old Registration Books, Current and 1955 Poll Books

Explanation: The two Negro persons registered as of January 1, 1954 were R. H. Hightower, West Sardis, listed in the current poll books as registered in 1892, and E. H. Holloway, listed in the current registration book as registered January 5, 1952 and also listed in the 1955 poll book, and who at the time of trial in U.S. v. Duke, ... F. Supp. ... (N.D. Miss., 1963), was established as dead, (Tr. 214, 386).

[fol. 704] Whites: 4676
Source: 1955 Poll Books

Explanation: All white persons registered prior to January 1, 1954 were counted. The total includes 796 white persons registered prior to January 1, 1954 whose names are crossed out.

March 24, 1955

Negroes: 2
Source: Old Registration Books and Current and 1955 Poll Book

Explanation: The two Negro persons registered as of January 1, 1954 were R. H. Hightower, West Sardis, listed in the current poll books as registered in 1892 and E. H. Holloway, listed in the current West Sardis registration book as registered on January 5, 1952 and also listed in the 1955 poll book, and who at the time of trial in U.S. v. Duke, ... F. Supp. ... (N.D. Miss., 1963), was established as dead, (Tr. 214, 386).

Whites: 5344
Source: 1955 Poll Books

Explanation: All Whites registered prior to March 24, 1955 were counted. The total includes 1059 white persons registered prior to March 24, 1955 whose names are crossed out.

January 1, 1960

Negroes: 1
Source: Current Poll Books, U.S. v. Duke, (Tr. 214, 386)

Explanation: The one Negro registered is R. H. Hightower, supra; E. H. Holloway is excluded as having died (U.S. v. Duke, Tr. 214,386) and having been dropped from the current poll book prior to January 1, 1960.

Whites: 4,755
Source: Current Poll Books

Explanation: The total number of white persons registered was obtained by counting all persons shown as registered prior to January 1, 1960 and subtracting the one known Negro from this total.

June 1, 1962

Negroes: 2
Source: Current Registration and Poll Books, and U.S. v. Duke, C.A. D-C-45-61

Explanation: The two Negroes are R. H. Hightower, West Sardis, registered in 1892, and Houston Potts, Jr., registered on April 23, 1962. Both appear in the current poll books and were identified as Negroes. (U.S. v. Duke, C.A. D-C-45-61).

[fol. 705] Whites: 5,309
Source: Current Poll Books

Explanation: Total number of white persons registered was obtained from the current poll books by counting the total number of persons registered prior to June 1, 1962 and subtracting from this total the two known Negroes.

General Information

Name of Present Registrar: Elsie Duke
Date Present Registrar Took Office: January, 1932
Dates Records Were Photographed: January 28-30, 1963
Description of Records Photographed:

Current Registration Books for Period

1954 to date of photographing

Current Poll Books for Period: 1959-1962
Old Registration Books: 1892-1954—Some Precincts
Old Poll Books: 1879-1959, intermittently.
Application Forms:

Number Made Available: 242
Period in Time They Cover:

January 27, 1961 thru January 26, 1963.

[fol. 706] Quitman #5

Date Current Registration Began: , 1950

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890	285			587		
Jan. 1, 1899	366	319	87.5%	1,059	130	12.2%
Jan. 1, 1954	5,186	3,160	60.9%	7,844	208	2.6%
Mar. 24, 1955	5,186	3,571	68.8%	7,844	318	4.0%
Jan. 1, 1960	4,176	3,574	85.5%	5,673	395	6.9%
June 1, 1962	4,176	2,991	71.6%	5,673	436	6.6%

Total Votes Cast in First Gubernatorial Primary

1951	3,079	1959	2,971
1955	3,057	1963	3,213

Source and Explanation of Registration Statistics

Race Identification

The current registration books indicates the race of all electors.

January 1, 1954

Negroes: 208
Source: Current Registration Books

Explanation: All Negroes registered prior to January 1, 1954 were counted. The total excludes 2 Negroes registered prior to January 1, 1954 whose names are crossed out. The current registration books were used instead of poll books in order to obtain the maximum number of Negroes registered.

Whites: 3,160
Source: 1950-1955 Poll Books

[fol. 707] January 1, 1954

Explanation: All whites registered prior to January 1, 1954 were counted. The total excludes 588 whites whose names are crossed out. The poll books were used rather than the registration books in order to obtain the maximum number of white persons registered.

March 24, 1955

Negroes: 318
Source: Current Registration Books

Explanation: All Negroes registered prior to March 24, 1955 were counted. The total excludes 7 Negroes registered prior to March 24, 1955 whose names are crossed out.

Whites: 3,571
Source: 1950-1955 Poll Books

Explanation: All white persons registered prior to March 24, 1955 were counted. The total excludes 618 white persons whose names are crossed out.

January 1, 1960

Negroes: 395
Source: Current Registration Books

Explanation: All Negroes registered prior to January 1, 1960 were counted. The total excludes 7 Negroes registered prior to January 1, 1960 whose names are crossed out.

Whites: 3,574
Source: 1955-1960 Poll Books

Explanation: All whites registered prior to January 1, 1960 were counted. The total excludes 2,086 whites registered prior to January 1, 1960 whose names are crossed out.

June 1, 1962

Negroes: 436
Source: Current Registration Books

Explanation: All Negroes registered prior to June 1, 1962 were counted. The total excludes 7 Negroes whose names are crossed out.

Whites: 2,991
Source: 1960-1963 Poll Books

Explanation: All whites registered prior to June 1, 1962 were counted. The total excludes 2,486 whites whose names are crossed out.

Note: Poll books were used in counting white persons for all dates because the figures they yield are more reliable than those the registration books yield. There are new poll books for each of the periods 1950-1955, 1955-1960 and [fol. 708] 1960-1963 so that these books constitute an extremely reliable source, more or less fully purged as regards deaths, leaving the county, etc. For registrations in the period when each of the poll books was current, the registration books for the particular period seem (on the basis of checks in randomly-selected precincts) to show the same registrants.

General Information

Name of Present Registrar:

Jesse Evenson (incapacitated; wife Mrs. Marie Evenson has assumed his responsibility as of June 30, 1962.)
Date Present Registrar Took Office: 1952
Date Records Were Examined: May 28-29, 1963
Description of Records Examined:

Current Registration Books for Period: 1950 to date
Current Primary Poll Books for Period: 1951 to 1963
Old Registration Books for Period: 1877-1950

Old Poll Books for Period: None
Application Forms:

Number Made Available: 452

Period of Time They Cover:

January 1961-April 1963 (One application form dated March 24, 1955.)

[fol. 709] Tallahatchie #6

Date Current Registration Began: , 1939

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890	1,161			1,944		
Jan. 1, 1899	1,501	1,540	100%	3,045	245	8%
Jan. 1, 1954	6,299	4,569	73%	9,235	1	.01%
Mar. 24, 1955	6,299	4,569	73%	9,235	1	.01%
Jan. 1, 1960	5,099	4,334	85%	6,483	1	.015%
June 1, 1962	5,099	4,330	85%	6,483	5	.075%

Total Votes Cast in First Gubernatorial Primary

1951	4,579	1959	4,334
1955	4,570	1963	(Incomplete)

Source and Explanation of Registration Statistics

Race Identification

In order to establish the race of those persons whose race is not identified in the books, the FBI, in March 1963 was furnished a list, compiled from the current registration books, of 1,180 names of persons registered in Tallahatchie County but not identified by race. It was established in this investigation that of these 1,180 persons, 1,162 were white and 3 others were Negro. The remaining 15 could not be identified as to race. The 3 registered persons identified as Negroes are all known through investigation in the county by attorneys of the plaintiff to be Negroes and were all known to have registered on April 23, 1963.

January 1, 1954

Negroes: 1
Source: Current Registration Books

[fols. 710-711] Explanation: One Negro, registered on October 27, 1948, appears in the current registration books (Robert L. Ronson, Sumner precinct). He is the only Negro shown in the books as registered prior to January 1, 1954 and he is also included in the figures for 1955, 1960, and 1962.

Whites: 4,569
Source: 1955 Primary Election Figures and Current Registration Books

Explanation: The minimum number of white persons registered was obtained by subtracting from the total number of votes cast in the first Gubernatorial primary in August 1955, the one Negro registered on January 1, 1954.

March 24, 1955

Negroes: 1
Source: Current Registration Books

Explanation: The one Negro registered prior to March 24, 1955 was Robert L. Ronson.

Whites: 4,569
Source: 1955 Primary Election Figures and Current Registration Books

Explanation: The minimum number of white persons registered was obtained by subtracting from the total number of votes cast in the first Gubernatorial primary in August 1955, the one Negro registered on August 1, 1955.

January 1, 1960

Negroes: 1
Source: Current Registration Books

Explanation: The one Negro registered prior to March 24, 1955 was Robert L. Ronson.

Whites: 4,334
Source: 1955 Primary Election Figures and Current Registration Books

Explanation: The minimum number of white persons registered was obtained by subtracting the one Negro registered prior to August 1959 from the total number of votes cast for candidates for Governor in Tallahatchie County in the first primary in August 1959.

[fol. 712] June 1, 1962

Negroes: 5
Source: Current Registration Books

Explanation: All Negroes registered prior to June 1, 1962 were counted. The total includes 4 Negroes on the books registered on April 23, 1962, known through investigation by the Government to be Negroes, and Robert L. Ronson, registered on October 27, 1948.

Whites: 4,334
Source: 1955 Primary Election Figures and Current Registration Books

Explanation: The minimum number of white persons registered was obtained by subtracting the one Negro registered prior to January 1, 1954 and four other Negroes registered on April 23, 1962 from the total number of votes cast for candidates for Governor in Tallahatchie County in the first primary in August 1959.

General Information

Name of Present Registrar: Tom E. Harris
Date Present Registrar Took Office: January 1960
Dates Records Were Photographed:

December 1961 and August 23, 1962

Description of Records Photographed:

Current Registration Books for Period:

1939 to date of photographing

Current Poll Books for Period: 1947-1960
Old Registration Books for Period: None
Old Poll Books for Period: 1939-1947 (Intermittently)

Application Forms:

Number Made Available: 76

Period of Time They Cover:

June 1, 1960-August 21, 1962

[fol. 713] Tunica #8

Date Current Registration Began: , 1939

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890	437			2,797		
Jan. 1, 1899	567	517	91%	4,326	106	2.45%
Jan. 1, 1954	2,251	1,440	64%	9,123	3	.033%
Mar. 24, 1955	2,251	1,769	78%	9,123	29	.32%
Jan. 1, 1960	2,011	2,253	100%	5,822	40	.69%
June 1, 1962	2,011	1,436	71%	5,822	42	.72%

Total Votes Cast in First Gubernatorial Primary

1951	1,402	1959	1,407
1955	1,539	1963	1,308

Source and Explanation of Registration Statistics

Race Identification

The current registration books and the poll books indicate the race of all registrants registering until about 1959, Mrs. Abbay, the Circuit Clerk, reviewed the accepted applications filed since 1957 with attorneys of the plaintiff and identified all applications of Negroes. Race identification is thus complete through March 28, 1963.

January 1, 1954

Negroes: 3
Source: 1955-1959 Poll Books

Explanation: All Negroes registered prior to January 1, 1954 were counted.

Whites: 1,440
Source: 1955-1959 Poll Books

Explanation: All whites registered prior to January 1, 1954 were counted.

[fol. 714] March 24, 1955

Negroes: 29
Source: 1955-1959 Poll Books

Explanation: All Negroes registered prior to March 24, 1955 were counted.

Whites: 1,769
Source: 1955-1959 Poll Books

Explanation: All whites registered prior to March 24, 1955 were counted.

January 1, 1960

Negroes: 40
Source: 1955-1959 Poll Books

Explanation: All Negroes registered prior to January 1, 1960 were counted. The race of registrants registering after 1957 is not shown. The total includes those Negroes registered before January 1, 1960 shown in the books to be Negro and those persons registered before January 1, 1960 identified by the registrar as Negroes.

Whites: 2,253
Source: 1955-1959 Poll Books

Explanation: All whites registered prior to January 1, 1960 were counted. The total includes all persons registered prior to January 1, 1960 identified as whites and all persons registered prior to January 1, 1960 unidentified by race in the poll books and unidentified as Negroes by the registrar. Comparison with the population figure shows this figure to be inflated due probably to incomplete purging of the poll books.

June 1, 1962

Negroes: 42
Source: 1960-1962 Poll Books

Explanation: All Negroes registered prior to June 1, 1962 were counted. The total includes all such Negroes shown in the Poll Books and all persons registered prior to June 1, 1962 identified by the registrar as Negroes.

Whites: 1,436
Source: Current (1963) Poll Books

Explanation: All persons registered prior to June 1, 1962 were counted. The number of Negroes registered prior to June 1, 1962 was subtracted from the resultant total and the remainder is the figure for white registration. The 1960-1962 poll books were not used as they are incompletely purged as noted above.

[fol. 715] General Information

Name of Present Registrar: Mrs. Mary Abbay
Date Present Registrar Took Office: Approximately 1960
Dates Records were Photographed: March 28, 1963
Description of Records Photographed:

Current Registration Books for Period:

1939 to date of photographing

Current Poll Books for Period:

1963 to date of photographing

Old Registration Books: None
Old Poll Books for Periods:

1951-1955; 1955-1959; 1960-1962.

Application Forms:

Number Made Available: 497

Period in Time They Cover:

April 9, 1955-February 22, 1963

[fol. 716] Leflore County # 11

Date Current Registration Began: December, 1952

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890	893			3,494		
Jan. 1, 1899	858	812	95%	3,029	43	1.4%
Jan. 1, 1954	10,331	4,328	42%	17,893	243	1.3%
Mar. 24, 1955	10,331	5,563	54%	17,893	400	2.2%
Jan. 1, 1960	10,274	6,925	68%	13,567	269	2%
June 1, 1962	10,274	7,168	70%	13,567	268	2%

Total Votes Cast in First Gubernatorial Primary

1951	5,101	1959	5,931
1955	5,388	1963	5,828

Source and Explanation of Registration Statistics

Race Identification

The current poll books indicate race until about September 1960. Negro applicants for the period from September 1960 to June 1962 were identified by checking addresses of applicants against addresses in the known Negro areas of Leflore County.

January 1, 1954

Negroes: 243
Source: Current Poll Books

Explanation: All Negroes registered prior to January 1, 1954 were counted.

[fol. 717] Whites: 4,328
Source: Registrar's count of qualified electors made in Current Poll Books on March 27, 1954

Explanation: The registrar's count shows 4,571 qualified electors as of March 27, 1954. The figure for white persons given above is 4,571 minus the 243 Negroes registered.

March 24, 1955

Negroes: 400
Source: Current Roll Books

Explanation: All Negroes registered prior to March 24, 1955 were counted.

Whites: 5,563
Source: Registrar's count of qualified electors made in Current Poll Books as of April 1, 1955.

Explanation: The registrar's count shows 5,963 qualified electors as of April 1, 1955. The figure for white persons given above is 5,963 minus the 400 Negroes registered.

June 1, 1960

Negroes: 269
Source: Current Poll Books

Explanation: All Negroes registered prior to January 1, 1960 were counted. The total excludes 128 Negroes whose names appear in the poll books with the notation "Gone 1959".

Whites: 6,925
Source: Registrar's count of qualified electors made in Current Poll Books as of October 31, 1959.

Explanation: The registrar's count shows 7,194 qualified electors as of October 31, 1959. The figure for white persons given above is 7,194 minus the 269 Negroes registered.

June 1, 1962

Negroes: 268
Source: Current Poll Books and Accepted Application Forms

[fol. 718] Explanation: All Negroes registered prior to June 1, 1962 were counted. The total excludes four Negroes whose names were purged from the books in 1961.

Whites: 7,168
Source: Answers of the City of Greenwood in the case of United States v. City of Greenwood, et al., Civil Action No. GC638 now pending in the United States District Court for the Northern District of Mississippi.

Explanation: In the answers referred to, the City of Greenwood states that 1,605 white persons have been registered from January, 1955 through June, 1962. The figure given above is the sum of the 5,563 whites registered on

March 24, 1955 and the 1,605 whites referred to by the City of Greenwood.

General Information

Name of Present Registrar: Mrs. Martha Turner Lamb
Date Present Registrar Took Office: 1952
Dates Records Were Photographed:

September 1960; March 1963; July 1963; August 1963

Description of Records Photographed:

Current Registration Books for Period:

1952 to date of second photographing

Current Poll Books for Period:

1952 to date of second photographing

Old Registration Books: None
Old Poll Books: None

Application Forms:

Number Made Available: approximately 3,500

Period of Time They Cover:

March 1955 to July 1963

[fol. 719] Washington #13

Date Current Registration Began: , 1951

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890	1,700			9,103		
Jan. 1, 1899	1,453	1,738	100%	12,046	397	4%
Jan. 1, 1954	14,074	5,453	38.8%	25,823	1,188	4.6%
Mar. 24, 1955	14,074	6,082	42.5%	25,823	1,478	5.7%
Jan. 1, 1960	19,837	9,847	49%	20,619	1,547	7.5%
June 1, 1962	19,837	10,838	54.5%	20,619	1,762	8.6%

Total Votes Cast in First Gubernatorial Primary

1951	6,131	1959	7,702
1955	6,669	1963	8,974

Source and Explanation of Registration Statistics

Race Identification

The current registration books and current poll books indicate race of all registrants.

January 1, 1954

Negroes: 1,188
Source: Current poll books

Explanation: All Negroes registered prior to January 1, 1954 were counted. The total excludes 104 Negroes registered prior to January 1, 1954 whose names are crossed out in the books.

Whites: 5,453
Source: Current poll books

Explanation: All whites registered prior to January 1, 1954 were counted. The total excludes 857 whites registered prior to January 1, 1954 whose names are crossed out in the books.

[fol. 720] March 24, 1955

Negroes: 1,478
Source: Current poll books

Explanation: All Negroes registered prior to March 24, 1955 were counted. The total excludes 125 Negroes registered prior to March 24, 1955 whose names are crossed out in the books.

Whites: 6,0[illegible]
Source: Current poll books

Explanation: All whites registered prior to March 24, 1955 were counted. The total excludes 958 whites registered prior to March 24, 1955 whose names are crossed out in the books.

January 1, 1960

Negroes: 1,547
Source: Current poll books

Explanation: All Negroes registered prior to January 1, 1960 in all Beats except Beat 3 were counted. All Negroes registered between March 24, 1955 and June 1, 1962 in Beat 3 were counted. On the basis of the relative activity of registration in the March 24, 1955-January 1, 1960 and January 1, 1960-June 1, 1962 periods in other beats a proportion of the total Negroes registered between March 24, 1955 and June 1, 1962 in Beat 3 was assigned to the March 24, 1955 to January 1, 1960 period. This figure was added to the number of Negroes registered in Beat 3 prior to March 24, 1955 and the sum was added to the total number of people registered prior to January 1, 1960 in all other Beats.

Whites: 9,847
Source: Current poll books

Explanation: All whites registered prior to January 1, 1960 in all Beats except Beat 3 were counted. All whites registered between March 24, 1955 and June 1, 1962 were counted. On the basis of the relative activity of registration in the March 24, 1955-January 1, 1960 and January 1, 1960-June 1, 1962 periods in other beats a proportion of the total whites registered between March 24, 1955 and June 1, 1962 in Beat 3 was assigned to the March 24, 1955-January 1, 1960 period. This figure was added to the number of whites registered in Beat 3 prior to March 24, 1955 and the sum was added to the total number of people registered prior to January 1, 1960 in all other Beats.

June 1, 1962

Negroes: 1,762
Source: An article in the Delta Democrat Times on March 4, 1962 written by Robert Carpenter following an interview with Mr. Cocke.

[fol. 721] Explanation: All Negroes registered prior to June 1, 1962 were presumably counted.

Whites: 10,838
Source: An article in the Delta Democrat Times on March 4, 1962 written by Robert Carpenter following an interview with Mr. Cocke

Explanation: All Negroes registered prior to January 1962 were presumably counted.

General Information

Name of Present Registrar: C. E. Cocke
Date Present Registrar Took Office: 1944
Dates Records Were Examined: July 25-26, 1962
Description of Records Examined:

Current Registration Books for Period: 1951 to date
Current Poll Books for Period: 1951 to date
Old Registration Books for Period: None
Old Poll Books for Period: None

Application Forms:

Number Made Available: 146

Period in Time They Cover:

January 30, 1961 to July 26, 1962

[fol. 722] Benton #14

Date Current Registration Began: 1890

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890	1,230			877		
Jan. 1, 1899	1,215	880	72%	1,009	120	11%
Jan. 1, 1954	2,780	2,152	77%	1,749	40	.4%
Mar. 24, 1955	2,780	2,266	81%	1,749	40	.23%
Jan. 1, 1960	2,514	2,009	80%	1,419	42	.3%
Jan. 1, 1962	2,514	2,078	82.5%	1,419	30	.21%

Total Votes Cast in First Gubernatorial Primary

1951	2,172	1959	2,077
1955	2,333	1963	(incomplete)

Source and Explanation of Registration Statistics

Race Identification

The current and old poll books indicate the race of all electors.

January 1, 1954

Negroes: 40
Source: 1955-1960 Poll Books

Explanation: All Negroes registered prior to January 1, 1954 were counted. The total excludes 17 Negroes registered prior to January 1, 1954 whose names are crossed out.

[fol. 723] Whites: 2,152
Source: 1955 Primary Election Figures and 1955-1960 Poll Books

Explanation: The minimum number of white persons registered was estimated from the total number of votes cast for candidates for Governor in the first primary in August 1955 minus the total number of Negroes registered as of March 24, 1955 minus the 141 white persons registered between January 1, 1954 and March 24, 1955.

March 24, 1955

Negroes: 40
Source: 1955 to 1960 Poll Books

Explanation: All Negroes registered prior to March 24, 1955 were counted. The total excludes 17 Negroes registered prior to March 24, 1955.

Whites: 2,266
Source: 1955-1960 Poll Books

Explanation: The minimum number of white persons registered was estimated from the total number of votes cast for candidates for Governor in the first primary in August 1955 minus the total number of Negroes registered as of March 24, 1955.

January 1, 1960

Negroes: 42
Source: 1955-1960 Poll Books

Explanation: All Negroes registered prior to January 1, 1960 were counted. The total excludes 17 Negroes registered prior to January 1, 1960 whose names are crossed out.

Whites: 2,009
Source: 1959 Primary Election Figures and 1955-1960 Poll Books

Explanation: The minimum number of white persons registered was estimated from the total number of votes cast for candidates for Governor in the first primary in August 1959 minus the total number of Negroes registered as of January 1, 1960.

[fol. 724] June 1, 1962

Negroes: 30
Source: Current Poll Books

Explanation: All Negroes registered prior to June 1, 1962 were counted. The total includes 6 Negroes registered prior to June 1, 1962 whose names are crossed out.

Whites: 2,078
Source: Current Poll Book, 1955-1960 Poll Book, and 1959 Primary Election Figures

Explanation: All whites registered between January 1, 1960 and June 1, 1962 were counted in the current poll books and added to the figure for white registration as of January 1, 1960 given above. The total includes 7 whites registered between January 1, 1960 and June 1, 1962 whose names are crossed out.

Note: Election figures had to be used for the 1954, 1955 and 1960 white registration figures. The registration books date from 1890 and are unreliable as to deaths and transfers. It could not be discovered from the poll books whether they were kept up to date for deaths, transfers, etc. The number of Negroes was small and the error introduced by these factors was sufficiently negligible to make counting Negroes in the poll books practicable. The election figures were judged a more reliable source for the white registration figures.

General Information

Name of Present Registrar: John L. Mathis
Date Present Registrar Took Office: January, 1952
Date Records Were Photographed: December 20, 1962
Description of Records Photographed:

Current Registration Books for Period:

1890 to date of photographing

Current Poll Books for Period:

1960 to date of photographing

[fol. 725] Old Registration Books: None
Old Poll Books: 1955-1960
Application Forms:

Number Made Available: 182

Period of Time They Cover:

June 25, 1962 through May 6, 1963

[fol. 726] Grenada #16

Date Current Registration Began: , 1948

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890	952			2,085		
Jan. 1, 1899	952	788*	80%	2,071	303*	14.6%
Jan. 1, 1954	5,599	5,258	94%	4,980	92	1.85%
Mar. 24. 1955	5,599	3,467	62%	4,980	130	2.6%
Jan. 1, 1960	5,792	4,755	83%	4,323	134	3.1%
June 1, 1962	5,792	5,518	95%	4,323	135	3.1%

*From 1896 Registration Statistics

Total Votes Cast in First Gubernatorial Primary

1951	3,098	1959	3,652
1955	3,597	1963	4,019

Source and Explanation of Registration Statistics

Race Identification

The current registration books and current poll books indicate race of all electors.

January 1, 1954

Negroes: 92
Source: Current Registration Books

Explanation: All Negroes registered prior to January 1, 1954 were counted.

Whites: 5,258
Source: Current Registration Books

Explanation: All whites registered prior to January 1, 1954 were counted. The total excludes whites registered prior to January 1, 1954 whose names are crossed out.

[fol. 727] March 24, 1955

Negroes: 130
Sources: Current Registration Books

Explanation: All Negroes registered prior to January 1, 1954 were counted.

Whites: 3,467
Sources: 1955 Primary Election Figures and Current Registration Books

Explanation: The minimum number of white persons registered was estimated by subtracting the total number of Negroes registered prior to March 24, 1955 from the total number of votes cast for candidates for governor in the first primary in August 1955.

January 1, 1960

Negroes: 134
Sources: Current Registration Books

Explanation: All Negroes registered prior to January 1, 1960 were counted.

Whites: 4,755
Source: Current Poll Books, 1955 Primary Election Figures and Current Registration Books

Explanation: All whites registered between March 24, 1955 and January 1, 1960 were counted from the poll books. The resultant sum was added to the figure for white registration as of March 24, 1955. The total includes whites registered between the two dates whose names are crossed out in the poll books.

June 1, 1962

Negroes: 135
Source: Current Registration Books

Explanation All Negroes registered prior to June 1, 1962 were counted.

Whites: 5,518
Source: Current Poll Books, 1955 Primary Election Figures, Current Registration Books.

Explanation: All whites registered between March 24, 1955 and January 1, 1960 were counted from the poll books. The resultant sum was added to the figure for white registration as of March 24, 1955. The total includes whites registered between the two dates whose names are crossed out in the poll books.

[fol. 728] Note: The current registration books are used for the Negro registration figures throughout and for the January 1, 1954 white registration figure. They were not used for later white figure because in each case, the total they yielded for white persons registered was greater than the white voting age population. Clearly, the current (1942 on) registration books are very incompletely purged. The Negro figures gleaned from them are therefore substantially inflated. For example, the current poll books show only 35 Negroes registered prior to June 1, 1962.

The method used to obtain the white registration figures for 1960 and 1962 introduces an inaccuracy. It does not allow for people who voted in 1955 and died or left the county before 1960 or 1962.

General Information

Name of Registrar: Mrs. Aline B. Worsham
Date Present Registrar Took Office: December 1959
Dates Records were Photographed: April 24, 1963
Description of Records Photographed:

Current Registration Books for Period:

1942 to date of photographing

Current Poll Books for Period:

1958 to date of photographing

Old Registration Books: 1890 to 1942 (Intermittently)
Old Poll Books: 1948-1958 (Incomplete Sets)
Application Forms:

Number Made Available: 1,200

Period of Time Covered:

April 12, 1955-April 2, 1963

[fol. 729] Marshall #18

Date Current Registration Began: , 1937

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890	2.170			3,039		
Jan. 1, 1899	2,048	2,066	100%	3,638	247	6.8%
Jan. 1, 1954	4,406	3,180	72%	8,210	14	.17%
Mar. 24, 1955	4,406	3,403	77%	8,210	20	.24%
Jan. 1, 1960	4,342	4,030	93%	7,168	23	.32%
June 1, 1962	4,342	4,162	96%	7,168	57	.8%

Total Votes Cast in First Gubernatorial Primary

1951	3,277	1959	3,975
1955	3,423	1963	3,590

Source and Explanation of Registration Statistics
Race Identification

The current poll books and current registration books indicate the race of all registrants.

January 1, 1954

Negroes: 14
Source: Current Poll Books

Explanation: All Negroes registered prior to January 1, 1954 were counted. The total includes 2 Negroes whose names are crossed out.

Whites: 3,180
Source: 1955 Primary Election Totals and Current Poll Books

Explanation: The minimum number of whites registered prior to January 1, 1954 was estimated from the total number of votes cast for candidates for governor in the first primary in August 1955 less the number of Negroes shown by the poll books to have been registered at the time [fol. 730] of that election less the total number of whites shown by the poll books to have registered between January 1, 1954 and March 24, 1955.

March 24, 1955

Negroes: 20
Source: Current Poll Books

Explanation: All Negroes registered prior to March 24, 1955 were counted. The total includes two Negroes registered prior to March 24, 1955 whose names are crossed out.

Whites: 3,403
Source: 1955 Primary Election Totals and Current Poll Books

Explanation: The minimum number of white persons registered prior to January 1, 1954 was estimated from the total number of votes cast for candidates for governor in the first primary in August 1955 less the number of Negroes shown by the poll books to have been registered at the time of that election.

January 1, 1960

Negroes: 23
Source: Current Poll Books

Explanation: All Negroes registered prior to January 1, 1960 were counted. The total includes two Negroes whose names are crossed out.

Whites: 4,030
Source: Current Poll Books

Explanation: All white persons registered prior to January 1, 1960 were counted. The total includes 189 white persons whose names are crossed out and marked for death or transfer. These names were included because the books were less than a year old on January 1, 1960 and it is a reasonable assumption that only a small percentage of these deaths occurred within that year. The total also includes 1,024 whites whose names are crossed out with no reason given. The government believes that these are persons registered but delinquent in regard to poll tax.

June 1, 1962

Negroes: 57
Source: Current Registration Book and Current Poll Books

Explanation: All Negroes registered between January 1, 1960 and June 1, 1962 were counted in the current registration books and added to the total number of Negroes registered prior to January 1, 1960. The current registration books are used rather than the current poll books for counting Negro registrants between January 1, 1960 and June 1, 1962 because they are more complete with regard to recent registration and the margin of error for inadequate [fol. 731] purge for death or transfer is greatly reduced as registration becomes more current. This total excludes one Negro whose name is crossed out in the poll books for death and includes one Negro whose name is crossed out without designation (presumably a poll tax delinquent).

Whites: 4,162
Source: Current Registration Book and Current Poll Book

Explanation: All white persons registered between January 1, 1960 and June 1, 1962 were counted in the current registration books. In order to obtain a minimum figure for white persons registered during that period names which appeared in the registration books and which were crossed out were not included. The total number of white persons registered between January 1, 1960 and June 1, 1962 was then added to the total number of white persons registered

as of January 1, 1960 (above) in order to obtain the total number of white persons registered as of June 1, 1962.

Note: Simple registration book figures could not be used as they were substantially inflated. For example, the registration books show 8,603 (of a possible 4,342) white persons registered prior to June 1, 1962.

General Information

Name of Present Registrar: Otis Clayton
Date Present Registrar Took Office: January 1956
Date Records Were Photographed:

March 1962, January 1963, May 1963.

Description of Records:

Current Poll Books for Period:

1959 to date of photographing

Current Registration Books for Period:

1937 to date of photographing

Old Poll Books for Period: None
Old Registration Books for Period: None
Application Forms:

Number Made Available: 725

Period in Time They Cover:

September 16, 1961 to May 8, 1963.

[fol. 732] Lowndes #32

Date Current Registration Began: , 1912

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890						
Jan. 1, 1899						
Jan. 1, 1954	11,667	4,858	41.6%	9,177	30	.33%
Mar. 24, 1955	11,667	5,133	44%	9,177	151	1.6%
Jan. 1, 1960	16,460	7,181	43.6%	8,362	67	.8%
June 1, 1962	16,460	8,312	50.5%	8,362	95	1.1%

Total Votes Cast in First Gubernatorial Primary

1951	5,248	1959	5,869
1955	5,584	1963	6,605

Source and Explanation of Registration Statistics

Race Identification

Race is identified up through January 1, 1962 in the current registration books which have been in use since 1912. Race is not identified in the current primary poll books (1959 to March 25, 1963). Poll tax receipts for 1961 indicate race.

January 1, 1954

Negroes: 30
Source: Current Registration Books, and 1961 Election Commissioner's Records

Explanation: The number of Negro persons registered was obtained by counting names in the current registration books of all Negroes registered prior to this date. As the [fol. 733] registration books do not reflect death, transfers, purges, only persons under age 70 as of January 1, 1954 were counted. Negroes over 70 were counted only if their names were found on the Election Commissioner's records for 1961. The latter is a record of qualified voters for 1961 and established that those Negro persons over 70 as of January 1, 1954 whose names appear in the record were still alive as late as 1961.

Whites: 4,858
Source: Current Registration Books and Current Primary Poll Books

Explanation: The number of white persons registered was obtained by subtracting the number of Negroes registered on January 1, 1954 from the total number of persons registered prior to January 1, 1954 as reflected in the current primary poll books. All persons whose names are crossed out are included (except internal transfers). Because the current primary poll books began in 1959, these cross-outs are assumed to have been made after 1959.

March 24, 1955

Negroes: 151
Source: Current Registration Books

Explanation: The number of Negro persons registered was obtained by counting names in the current registration books of all Negroes registered prior to this date. As the registration books do not reflect death, transfers, purges, only persons under age 70 as of March 24, 1955 were counted. Negroes over 70 were counted only if their names were found on the Election Commissioner's records for 1961.

Whites: 5,133
Source: Current Registration Books and Current Primary Poll Books

Explanation: The number of white persons registered was obtained by counting all names of persons listed in the current primary poll books as having registered between January 1, 1954 and March 24, 1955 and then subtracting from this total the 131 Negroes who registered during this period. The difference was added to the number of white persons registered on January 1, 1954. All cross-outs except internal transfers were counted.

[fol. 734] January 1, 1960

Negroes: 67
Source: Current Registration Books and Current Primary Poll Books

Explanation: All Negroes who had registered prior to January 1, 1960 and whose names appeared in the current primary poll books were counted.

Whites: 7,181
Source: Current Primary Poll Books

Explanation: The total number of names in the current primary poll books with dates of registration before January 1, 1960 were counted. The total number of Negroes registered was then subtracted to obtain the white registration figure above.

June 1, 1962

Negroes: 95
Source: Current Primary Poll Books and 1961 Poll Tax Receipts

Explanation: All Negroes who had registered prior to January 1, 1962 and whose names appeared in the Current Primary poll books were counted. Between January 1, 1962 and June 1, 1962, 392 persons registered. Of these, all but 79 paid poll tax in 1961. Of those who paid poll tax, only 3 were Negro. The other 79 who did not pay poll tax are believed to be white. This is based on location of their residence in clearly white residential areas.

Whites: 8,312
Source: Current Primary Poll Books and 1961 Poll Tax Receipts

Explanation: The total number of names in the current primary poll books with dates of registration before June 1, 1962 were counted and 90 was subtracted from the total, as there were 90 Negroes' names in the primary poll books as of that date.

General Information

Name of Present Registrar: T. E. Wiggins
Date Present Registrar Took Office: 1956
[fol. 735] Date Records Were Photographed: March 25, 1963
Description of Records Photographed:

Current Registration Books for Period: 1912 to date
Current Primary Poll Books: 1959 to date
Election Commissioner's Records for Period:

1961 to date

Poll Tax Receipts for 1961
Lists of Poll Tax Payers for 1959, 1960 and 1961
Old Registration Books: None
Old Poll Books: None
Application Forms:

Number Made Available:

Period of Time They Cover:

[fol. 736] Claiborne #39

Date Current Registration Began: March 22, 1956

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890						
Jan. 1, 1899						
Jan. 1, 1954	1,929	1,450	75.1%	4,728	87	1.8%
Mar. 24, 1955	1,929	1,450	75.1%	4,728	140	2.96%
Jan. 1, 1960	1,688	1,440	85.3%	3,969	15	3.8%
June 1, 1962	1,688	1,440	85.3%	3,969	15	3.8%

Total Votes Cast in First Gubernatorial Primary

1951	1,463	1959	1,440
1955	1,452	1963	(Incomplete)

Source and Explanation of Registration Statistics

Race Identification

Race is indicated until March 24, 1955 in the old registration books and old primary poll books. For people registering prior to March 24, 1955, the old primary poll books have only eight people unidentified. Of these eight, six were checked against the old registration books and found to be white; the other two could not be found. They are assumed to be white.

After March 24, 1955, there is no race identification in either the old or current registration books or poll books.

January 1, 1954

Negroes: 87
Source: Old Poll Books

Explanation: The total number of Negroes listed in the old poll books with dates of registration prior to January 1, 1954 were counted. Persons whose names were crossed out because of death or transfer were not counted.

[fol. 737] Whites: 1,450
Source: Old Poll Books and total votes cast in first gubernatorial primary in August 1955.

Explanation: According to the poll books, of the 1,452 votes cast in the first primary in August 1955 only two were Negro.

March 24, 1955

Negroes: 140
Source: Old Poll Books

Explanation: The total number of Negroes listed in the old poll books with dates of registration prior to March 24, 1955 were counted. Persons whose names were crossed out because of death or transfers were not counted.

Whites: 1,450
Source: Old Poll Books and total votes cast in first gubernatorial primary in August 1955

Explanation: According to the old poll books, of the 1,452 votes cast in the first primary in August 1955, only two persons who voted were Negro.

January 1, 1960

Negroes: 15
Source: Current Registration Books, Old Registration and Old Poll Books

Explanation: Fifteen Negroes who are identified as having registered between 1934 and March 24, 1956 re-registered prior to January 1, 1960. This is of the total of 201 Negroes whose names appear in the old registration books prior to the registration. As of 1955, 140 of these were still alive and in the county (according to the old poll books). 1,019 persons registered for the first time since March 24, 1955 before the registration (908 of these are presently registered). On the basis of the Government's investigation, all of these persons are believed to be white.

Whites: 1,440
Source: Official Returns for First August Primary and 1954 and old Poll Books

Explanation: Because of the practice of holding a white primary in Claiborne County, all persons voting in the 1959 first primary are assumed to be white. The old poll books reflect that the maximum number of Negroes who voted in any single election between 1952 and 1955 was eight (election of November 2, 1954).

Negroes: 15
Source: Current Registration Books, Old Registration and Old Poll Books

Explanation: Fifteen Negroes who are identified as having registered between 1934 and March 24, 1956 re-registered prior to January 1, 1960. This is of the total of 201 Negroes whose names appear in the old registration books prior to the registration. As of 1955, 140 of these were still alive and in the county (according to the old poll books). 1,019 persons registered for the first time since March 24, 1955 before the registration (908 of these are presently registered). On the basis of the Government's investigation, all of these persons are believed to be white.

Whites: 1,440
Source: Official Returns for First August Primary, 1959 and Old Poll Books

Explanation: Because of the practice of holding a white primary in Claiborne County, all persons voting in the 1959 first primary are assumed to be white. The old poll books reflect that the maximum number of Negroes who voted in any single election between 1952 and 1955 was eight (election of November 2, 1954).

General Information

Name of Present Registrar: Mrs. Pauline Easley
Date Present Registrar Took Office: January 1, 1960
Date Records Were Photographed: March 14 and 15, 1963
Description of Records Photographed:

Current Registration Books for Period:

March 22, 1956 to date of photographing

Current Primary Poll Books for Period:

August 1956 to date of photographing

Old Registration Books:

1934 to re-registration in 1956; 1907 to 1934 intermittently

Old Poll Books: December 1939 to June 1955
Old General Poll Books: December 1939 to June 1955
Application Forms:

Number Made Available: 54

Period of Time They Cover:

June 29, 1962 to March 12, 1963

[fol. 739] Warren #43

Date Current Registration Began: , 1915

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890	2,471			5,552		
Jan. 1, 1899	2,612	1,986	75%	7,446	201	2.7%
Jan. 1, 1954	12,756	7,604	60%	12,312	1,667	13.5%
Mar. 24, 1955	12,756	8,408	66%	12,312	2,088	16.3%
Jan. 1, 1960	13,530	10,295	74%	10,726	2,251	21%
June 1, 1962	13,530	11,153	83%	10,726	2,360	22%

Total Votes Cast in First Gubernatorial Primary

1951	6,722	1959	7,613
1955	7,451	1963	8,974

Source and Explanation of Registration Statistics

Race Identification

The registration books show race through 1955. A card file shows race for all registrants. A card showing name, date of registration, and race is made up by the registrar for each registrant in this county. This system has been in use since before 1915. The cards are kept separated by race and by eligibility or non-eligibility to vote based on satisfaction of poll tax requirements. This file provides a continuous record of registration and is the source of the registration statistics cited herein. At the date of photographing the cards, according to the registrar, were up-to-date through November 1962.

January 1, 1954

Negroes: 1,667
Source: Current Registration Card File

Explanation: All Negroes registered prior to January 1, 1954 were counted. The total includes Negroes registered and qualified and Negroes registered and delinquent. The total excludes all Negroes registered prior to January 1, 1954 whose cards were in the deceased or no longer resident files when the files were photographed.

Whites: 7,604
Source: Current Registration Card File

Explanation: All whites registered prior to January 1, 1954 were counted. The total includes whites registered and qualified and whites registered and delinquent. The total excludes all whites registered prior to January 1, 1954 whose cards were in the deceased or no longer resident files when the files were photographed.

[fol. 740] March 24, 1955

Negroes: 2,088
Source: Current Registration Card File

Explanation: All Negroes registered prior to March 24, 1955 were counted. The total includes Negroes registered and qualified and Negroes registered and delinquent. The total excludes all Negroes registered prior to March 24, 1955 whose cards were in the deceased or no longer resident files when the files were photographed.

Whites: 8,408
Source: Current Registration Card File

Explanation: All whites registered prior to March 24, 1955 were counted. The total includes whites registered and qualified and whites registered and delinquent. The total excludes all whites registered prior to March 24, 1955 whose cards were in the deceased or no longer resident files when the files were photographed.

January 1, 1960

Negroes: 2,251
Source: Current Registration Card File and Accepted Applications of Negroes filed between March 24, 1955 and January 1, 1960.

Explanation: All applications filed by Negroes between March 24, 1955 and January 1, 1960 were counted. The resultant figure was added to the Negro registration figure for March 24, 1955. Their sum is the Negro registration figure for January 1, 1960.

Whites: 10,295
Source: Current Registration Card File and Accepted Applications of whites filed between March 24, 1955 and January 1, 1960.

Explanation: All applications filed by whites between March 24, 1955 and January 1, 1960 were counted. The resultant figure was added to the white registration figure for March 24, 1955. Their sum is the white registration figure for January 1, 1960. (About 430 people transferred into Warren between 1955 and 1962. There are no application forms for these people and the transfer certificates do not show race. While it is probable that they areall white they are not included in any of these totals.

June 1, 1962

Negroes: 2,360
Source: Current Registration Card File and Accepted Applications of Negroes filed between January 1, 1960 and June 1, 1962.

Explanation: All applications filed by Negroes between January 1, 1960 and June 1, 1962 were counted. The resultant figure was added to the Negro registration figure for January 1, 1960. Their sum is the Negro registration figure for June 1, 1962.

[fol. 741] Whites: 11,153
Source: Current Registration Card File and Accepted Applications of Negroes filed between January 1, 1960 and June 1, 1962.

Explanation: All applications filed by whites between January 1, 1960 and June 1, 1962 were counted. The resultant figure was added to the white registration figure for January 1, 1960. Their sum is the white registration figure for June 1, 1962.

Note: The count after 1955 was made using the application forms simply for convenience. Work done with the card file and the application forms in connection with a study not directly related to the instant one showed that the card file and application forms yield essentially the same registration statistics. The application form count is inaccurate as regards people who transferred into the county and were registered without completing forms or who registered and later moved or died.

General Information

Name of Present Registrar: J. Noel Nutt
Date Present Registrar Took Office: January 3, 1962
Date Records were Examined: January 7-11, 1963
Description of Records Examined:

Current Registration Books for Period: 1915 to date
Current Primary Poll Books: 1962
Old Registration Books: None
Old Poll Books: None
Application Forms:

Number Made Available: 3,552

Period of Time They Cover:

March 1955-January 1963

Note: The following chart indicates the rate of Negro registration by year from 1947 to 1962. The annual figures were obtained from the registrar's card file and represents the number of Negroes currently registered who registered or re-registered in the years indicated.

Year	No. of Negroes Reg'd
47	140
48	30

[fol. 742]

49	83
50	275
51	136
52	316
53	419
54	297
Prior to 3/24/55	123
After 3/24/55	10
56	26
57	44
58	36
59	37
60	36
61	48
62	25

[fol. 743] Wilkinson #44

Date Current Registration Began: , 1949

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890	928			2,412		
Jan. 1, 1899	985	961	98%	3,303	124	3.76%
Jan. 1, 1954	2,626	1,619	61%	4,558	32	.7%
Mar. 24, 1955	2,626	1,813	69%	4,558	43	.9%
Jan. 1, 1960	2,340	2,246	96%	4,120	53	1.3%
June 1, 1962	2,340	2,438	100%	4,120	60	1.5%

Total Votes Cast in First Gubernatorial Primary

1951	1,979	1959	1,749
1955	2,002	1963	1,837

Source and Explanation of Registration Statistics

Race Identification

Both the current registration books and the current poll books indicate the race of all registrants up to mid-1962.

January 1, 1954

Negroes: 32
Source: Current Poll Books

Explanation: All Negroes registered prior to January 1, 1954 were counted. The total excludes five Negroes registered prior to January 1, 1954 whose names are crossed out in the books.

[fol. 744] Whites: 1,619
Source: Current Poll Books

Explanation: All whites registered prior to January 1, 1954 were counted. The total excludes 860 whites registered prior to January 1, 1954 whose names are crossed out in the books.

March 24, 1955

Negroes: 43
Source: Current Poll Books

Explanation: All Negroes registered prior to March 24, 1955 were counted. The total excludes five Negroes registered prior to March, 1955 whose names are crossed out in the books.

Whites: 1,813
Source: Current Poll Books

Explanation: All whites registered prior to March 24, 1955 were counted. The total excludes 904 whites registered prior to March 24, 1955 whose names are crossed out in the books.

January 1, 1960

Negroes: 53
Source: Current Poll Books

Explanation: All Negroes registered prior to January 1, 1960 were counted. The total excludes five Negroes registered prior to January 1, 1960 whose names are crossed out in the books.

Whites: 2,246
Source: Current Poll Books

Explanation: All whites registered prior to January 1, 1960 were counted. The total excludes 1,008 whites registered prior to January 1, 1960 whose names are crossed out in the books.

June 1, 1962

Negroes: 60
Source: Current Poll Books

Explanation: All Negroes registered prior to June 1, 1962 were counted. The total excludes five Negroes registered prior to June 1, 1962 whose names are crossed out in the books.

[fol. 745] Whites: 2,438
Source: Current Poll Books

Explanation: All whites registered prior to June 1, 1962 were counted. The total excludes 1,015 whites registered prior to June 1, 1962 whose names are crossed out in the books.

General Information

Name of Present Registrar: R. Whitaker
Date Present Registrar Took Office: January 1, 1960
Date Records Were Photographed: August 2, 1963
Description of Records Photographed:

Current Registration Books for Period:

1949 to date of photographing

Current Poll Books for Period:

1949 to date of photographing

Old Registration Books: None
Old Poll Books: None
Application Forms:

Number Made Available: 234

Period of Time They Cover:

January 14, 1961 to July 20, 1963

[fol. 746] Yazoo #45

Date Current Registration Began: , 1950

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890	1,965			5,679		
Jan. 1, 1899	2,371	1,880	79%	7,557	66	.87%
Jan. 1, 1954	8,024	4,236	54%	11,126	139	1.2%
Mar. 24, 1955	8,024	4,865	60%	11,126	208	1.8%
Jan. 1, 1960	7,598	6,274	83%	8,719	256	2.9%
June 1, 1962	7,598	7,130	93%	8,719	256	2.9%

Total Votes Cast in First Gubernatorial Primary

1951	4,667	1959	4,792
1955	4,714	1963	5,259

Source and Explanation of Registration Statistics

Race Identification

The current registration books and current poll books indicate race of all people registered until about April 1958. After that date, race is indicated only sporadically.

January 1, 1954

Negroes: 139
Source: Current Poll Books

Explanation: All Negroes registered prior to January 1, 1954 were counted. The total includes 29 Negroes whose names are crossed out with a notation that the names were [fol. 747] removed at the request of the registrants. The government has determined that these names were crossed out in 1955 and 1956. The total excludes 9 Negroes whose names are crossed out without explanation or because of death.

Whites: 4,236
Source: Current Poll Books

Explanation: All whites registered prior to January 1, 1954 were counted. The total excludes 1,775 whites registered prior to January 1, 1954 whose names are crossed out in the books.

March 24, 1955

Negroes: 208
Source: Current Poll Books

Explanation: All Negroes registered prior to March 24, 1955 were counted. The total includes 55 Negroes registered prior to March 24, 1955 (of which 29 were registered prior to January 1, 1954 and are mentioned above) whose names are crossed out with a notation that the names were removed at the request of the registrants. The government has determined that these names were crossed out in 1955 and 1956. The total excludes 15 Negroes whose names are crossed out without explanation or because of death or leaving the county.

Whites: 4,865
Source: Current Poll Books

Explanation: All whites registered prior to March 24, 1955 were counted. The total excludes 1,985 whites registered prior to March 24, 1955 whose names are crossed out in the books.

January 1, 1960

Negroes: 256
Source: Current Poll Books and Statement of Yazoo County Registrar to attorneys for the Plaintiff

Explanation: Three Negroes are shown in the poll books to have registered between March 24, 1955 and 1958. The books do not indicate race after 1958. No more than 100 Negroes applied between 1958 and June 1, 1962 according to Mrs. Fisher. During 1955 and 1956, 55 Negroes' names were removed from the books at the Negroes' request. [fol. 748] The figure for Negroes as of January 1, 1960 is the 208 Negroes registered as of March 24, 1955 plus the three Negroes registered between March 24, 1955 and 1958 plus 100 to make maximum allowance for Negroes put on the books between 1958 and January 1, 1960 without race identification minus the 55 Negroes who asked that their names be removed.

Whites: 6,374
Source: Current Poll Books and Statement of Registrar

Explanation: All persons, identified as whites, registered prior to January 1, 1960 were counted. All persons registered prior to January 1, 1960 unidentified by race were counted. The total is the sum of these two counts minus 100 to make maximum allowance for the fact that some of the persons (though, according to the register, certainly no more than 100) unidentified by race are Negroes.

June 1, 1962

Negroes: 7,130
Source: Current Poll Books and Statement of Registrar

Explanation: The total for Negroes as of June 1, 1962 is the same as that as of January 1, 1960 as maximum allowance for any Negro registration between 1958 and June 1, 1962 is already made in the January 1, 1960 figure.

Whites: 6,274
Source: Current Poll Books and Statement of Registrar

Explanation: All persons registered between January 1, 1960 and June 1, 1962 were counted. The total is the sum of that count and the figure for whites for January 1, 1960.

General Information

Name of Present Registrar: Mrs. C. H. Fisher
Date Present Registrar Took Office: 1934
Date Records Were Photographed: June 25, 1962
Description of Records Photographed:

Current Registration Books for Period: 1950 to date

Current Poll Books for Period:

1950 to date of photographing

[fol. 749] Application Forms

Number Made Available: Approximately 1,200
Period in Time They Cover: 1955 to 1962

[fol. 750] Amite #46

Date Current Registration Began: March 18, 1952

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890	1,645			1,903		
Jan. 1, 1899	1,829	1,787	94%	2,263	276	12%
Jan. 1, 1954	5,162	3,229	63%	4,598	2	.04%
Mar. 24, 1955	5,162	3,976	77%	4,598	2	.04%
Jan. 1, 1960	4,449	3,600	81%	3,560	1	.028%
June 1, 1962	4,449	3,532	80%	3,560	1	.028%

Total Votes Cast in First Gubernatorial Primary

1951	3,275	1959	3,295
1955	3,407	1963	3,236

Source and Explanation of Registration Statistics

Race Identification

The current registration books show the race of all registrants registering from the start of the current registration through 1955. This is done in the books by typing a letter, for example W, at the top of the page and identifying other registrants on the page by typing a ditto mark in the race column next to the registrant's name and under the W at the top of the race column. For registrations after 1955 the race columns are completely blank. Though race was formerly identified through 1955 using the method described, the first entry in the race column on every page had, when the books were photographed, been erased and a ditto mark had been typed in over the erasure.

Only two Negroes, R. H. Weddington and Frank J. Norwood, have registered in Amite County since 1952. This statement is based on the following:

(1) The names of prominent white residents of Amite County (County officials, etc.) have been located in the books and after their names ditto marks appear in the race column. where these appear in a continuous sequence of ditto marks, it is clear that all people in the sequence are white. When this pattern is found in a number of instances, the inference is clear that an erased first entry in the race column followed [fol. 751] by a chain of ditto marks are pages of white registrants. The overwhelming majority of pages in the books are of this type.

(2) Twenty Negroes were registered in Amite County between 1934 and 1952 (see old registration books. Their race was designated). Only two of these Negroes re-registered (both Weddington and Norwood did on November 7, 1952). There are erasures in the race column beside each of their names and ditto marks have been typed therein. Neither name appears at the top of the page.

(3) The Federal Bureau of Investigation has interviewed 37 people selected randomly from the low educated and low income group in Amite County who are on the current registrar's books without indication as to their race. All of them are white.

(4) Attorneys of this Division have conducted an investigation in the county. At least 40 Negroes have been interviewed, including leaders of the Negro community. None are registered and none know of any Negroes who are registered, except Weddington who knew of himself and Frank J. Norwood.

January 1, 1954

Negroes: 2
Source: Current Registration Books

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1955, but he was presumed to be dead before January 1, 1960. He was 81 in 1952.

Whites: 3,229
Source: Current Registration Books

Explanation: All persons registered prior to January 1, 1954 were counted. The total excludes R. H. Weddington and Frank J. Norwood and includes those persons whose names are crossed out.

March 24, 1955

Negroes: 2
Source: Current Registration Books

Explanation: R. H. Weddington and Frank J. Norwood, both Negroes, registered on November 7, 1962.

[fol. 752] Whites: 3,976
Source: Current Registration Books

Explanation: All persons registered prior to March 24, 1955 were counted. The total excludes R. H. Weddington and Frank J. Norwood, both Negroes, but includes those persons whose names are crossed out.

January 1, 1960

Negroes: 1
Source: Current Registration Books

Explanation: R. H. Weddington, Negro, registered on November 7, 1952. Frank J. Norwood was presumably dead at this time.

Whites: 3,600
Source: Current Registration Books

Explanation: The total for white persons is the number of qualified electors in Amite County which was entered in the registration book on July 20, 1959. The registrar is charged with certifying the number of ballots to be prepared for each election and to do this he must prepare the figure we cite. The figure is inaccurate to the extent that it does not include persons registered between July 20, 1959 and January 1, 1960.

June 1, 1962

Negroes: 1
Source: Current Registration Books

Explanation: The total for white persons is the number certified by the Election Commissioners as the number of registered voters in Amite County at the time of the certification, October 3 and 4, 1962, less the number of people shown in the registration books with dates of registration between June 1, 1962 and October 4, 1962, less R. H. Weddington.

General Information

Name of Present Registrar: H. K. Whittington
Date Present Registrar Took Office: January 1, 1952
Dates Records Were Photographed:

March 22, 1963 and May 2, 1963

[fol. 753] Description of Records Photographed:

Current Registration Books for Period:

March 18, 1952 to date

Current Poll Books: 1952 to date of photographing
Old Registration Books for Period: 1934 to 1952
Old Poll Books: None
Application Forms:

Number Made Available: 65
Period of Time They Cover:

June 14, 1955-March 14, 1963

[fol. 754] Grenada #47

Date Current Registration Began: ——, 1935

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890	3,073			2,884		
Jan. 1, 1899	3,494	2,786	80%	3,522	143	4.1%
Jan. 1, 1954	8,827	4,742	54%	7,841	8	.1%
Mar. 24, 1955	8,827	5,073	57.5%	7,841	23	.29%
Jan. 1, 1960	8,153	6,600	81%	6,407	20	.31%
June 1, 1962	8,153	7,533	92%	6,407	25	.39%

Total Votes Cast in First Gubernatorial Primary

1951	5,006	1959	5,076
1955	4,809	1963	4,982

Source and Explanation of Registration Statistics

Race Identification

The current registration books and current poll books indicate the race of all registrants.

January 1, 1954

Negroes: 8
Source: Current Registration Books

Explanation: All Negroes registered prior to January 1, 1954 were counted. No Negroes registered prior to January 1, 1954 are crossed out. An inspection in the poll books showed the names of 6 Negroes registered prior to January 1, 1954.

Whites: 4,742
Source: Current Poll Books

Explanation: All whites registered prior to January 1, 1954 were counted. The total excludes 2,500 whites registered prior to January 1, 1954 whose names are crossed out.

[fol. 755] March 24, 1955

Negroes: 23
Source: Current Poll Books

Explanation: All Negroes registered prior to March 24, 1955 were counted. No names of Negroes registered prior to March 24, 1955 are crossed out. The Poll Books were used as a count in the registration books yielded a smaller figure.

Whites: 5,073
Source: Current Poll Books

Explanation: All whites registered prior to March 24, 1955 were counted. The total excludes 2,682 whites registered prior to March 24, 1955 whose names are crossed out.

January 1, 1960

Negroes: 20
Source: Current Poll Books

Explanation: All Negroes registered prior to January 1, 1960 were counted. No names of Negroes registered prior to January 1, 1960 are crossed out. The Poll Books were used for this figure as a count in the registration books yielded a smaller figure.

Whites: 7,600
Source: Current Poll Books

Explanation: We estimate that about 7,600 whites registered prior to January 1, 1960.

June 1, 1962

Negroes: 25
Source: Current Poll Books

Explanation: All Negroes registered prior to June 1, 1962 were counted. No names of Negroes registered prior

to June 1, 1962 are crossed out. The Poll Books were used for this figure as a count in the registration books yielded a smaller figure.

Whites: 7,533
Source: Current Poll Books

Explanation: All whites registered prior to June 1, 1962 were counted. The total excludes whites registered prior to June 1, 1962 whose names are crossed out.

General Information

Name of Present Registrar: A. B. Weeks
Date Present Registrar Took Office: January 1, 1952
[fol. 756] Date Records were Photographed:

January 3-4, 1963

Description of Records Photographed:

Current Registration Books for Period:

1935 to date of photographing *

Current Primary Poll Books:

1935 to date of photographing

Old Registration Books: None
Old Poll Books: None
Application Forms:

Number Made Available: 541

Period of Time Covered:

February 15, 1960-January 2, 1963

* In Some precincts the registration books go back as far as 1923, however, they are still in use.

[fol. 757] Franklin #48

Date Current Registration Began: ——, 1941

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890	1,171			860		
Jan. 1, 1899	1,466	970	67%	1,241	103	8.3%
Jan. 1, 1954	3,956	2,807	71%	2,294	138	6.3%
Mar. 24, 1955	3,956	3,358	85%	2,294	229	10%
Jan. 1, 1960	3,403	3,528	100%	1,842	234	12.7%
June 1, 1962	3,403	3,731	100%	1,842	236	12.8%

Total Votes Cast in First Gubernatorial Primary

1951	2,781	1959	2,693
1955	2,902	1963	2,662

Source and Explanation of Registration Statistics
Race Identification

The current registration books indicate race through January 1, 1962 and only sporadically thereafter. The current poll books do not indicate race except in the case of a few Negro registrants.

January 1, 1954

Negroes: 138
Source: Current Registration Books

Explanation: All Negroes registered prior to January 1, 1954 were counted. The total excludes 8 Negroes whose names are crossed out.

Whites: 2,807
Source: Current Registration Books

Explanation: All whites registered prior to January 1, 1954 were counted. The total excludes 760 whites whose names are crossed out.

[fol. 758] March 24, 1955

Negroes: 229
Source: Current Registration Books

Explanation: All Negroes registered prior to March 24, 1955 were counted. The total excludes eight Negroes whose names are crossed out.

Whites: 3,358
Source: Current Registration Books

Explanation: All whites registered prior to March 24, 1955 were counted. The total excludes 765 whites whose names are crossed out.

January 1, 1960

Negroes: 234
Source: Current Registration Books

Explanation: All Negroes registered prior to January 1, 1960 were counted. The total excludes 9 Negroes registered prior to January 1, 1960 whose names are crossed out.

Whites: 3,528
Source: Current Registration Books

Explanation: All whites registered prior to January 1, 1960 were counted. The total excludes 767 whites registered prior to January 1, 1960 whose names are crossed out. From comparison with the population figures it is clear that the total is inflated due to incomplete purging.

June 1, 1962

Negroes: 236
Source: Current Registration Books

Explanation: All Negroes registered prior to June 1, 1962 were counted. The total excludes 9 Negroes registered prior to June 1, 1962 whose names are crossed out.

Whites: 3,731
Source: Current Registration Books

Explanation: All whites registered prior to June 1, 1962 were counted. The total excludes 769 whites registered prior to June 1, 1962 whose names are crossed out. From comparison with the population figures it is clear that the total is inflated due to incomplete purging.

General Information

Name of Present Registrar: Mrs. Lois Foster
Date Present Registrar Took Office: January, 1944

Date Records were Photographed: August 1, 1963
[fol. 759] Description of Records Photographed:

Current Registration Books for Period:

1941 (approximately) to date

Current Poll Books for Period:

1941 (approximately) to date

Old Registration Books: None
Old Poll Books: None
Application Forms:

Number Made Available: 99

Period in Time They Cover:

Aug. 16, 1962 to July 13, 1963

[fol. 760] Hinds #49

Date Current Registration Began: ——, 1949

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890	2,700			5,566		
Jan. 1, 1899	3,231	3,273	100%	8,225	220	2.68%
Jan. 1, 1954*	52,015			35,021	2,705	7.7%
Mar. 24, 1955*	52,015			35,021	3,547	10.1%
Jan. 1, 1960*	67,836			36,138		
June 1, 1962	67,836	56,363	83%	36,138	4,756	13.2%

Total Votes Cast in First Gubernatorial Primary

1951	23,098	1959	28,715
1955	26,518	1963	(incomplete)

* Counts are being made to supply the missing figures.

Source and Explanation of Registration Statistics
Race Identification

The current registration books indicate the race of all registrants.

January 1, 1954

Negroes: 2,705
Source: Current Registration Books

Explanation: All Negroes registered prior to January 1, 1954 were counted. The total includes Negroes originally registered prior to January 1, 1954 who later transferred

to other precincts in the county. The total excludes 285 Negroes whose names are crossed out.

[fol. 761] March 24, 1955

Negroes: 3,547
Source: Current Registration Books

Explanation: All Negroes registered prior to March 24, 1955 were counted. The total excludes 374 Negroes registered prior to March 24, 1955 whose names are crossed out.

June 1, 1962

Negroes: 4,347
Source: Current Registration Books

Explanation: All Negroes registered prior to June 1, 1962 were counted. The total excludes 414 Negroes registered prior to June 1, 1962 whose names are crossed out. H. T. Ashford, Jr., the Circuit Clerk of Hinds County, testified on July 30, 1963 in the trial of United States v. H. T. Ashford, Jr., et al., that there were about 5,000 Negroes registered.

Whites: 56,363
Source: Testimony of H. T. Ashford, Jr.

Explanation: In the course of the same testimony cited above, H. T. Ashford gave this figure for whites.

General Information

Name of Present Registrar: H. T. Ashford, Jr.
Date Present Registrar Took Office: January 1940
Date Records Were Photographed: January and June, 1963
Description of Records Photographed:

Current Registration Books for Period:

1949 to date of photographing

Current Poll Books for Period: 1962 to date
Old Registration Books for Period: 1900 to present
Old Poll Books for Period: 1900 to present
Application Forms

Number Made Available: About 5,000

Period of Time They Cover:

June 1961 (about) to present

[fol. 762] Holmes #50

Date Current Registration Began: ——,

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890	1,712			4,750		
Jan. 1, 1899	1,987	2,092	100%	5,895	434	7.3%
Jan. 1, 1954	5,569	3,616	64.9%	11,468	8	.07%
Mar. 24, 1955	5,569	3,616	64.9%	11,468	8	.07%
Jan. 1, 1960	4,773	3,530	74.0%	8,757	8	.09%
June 1, 1962	4,773	3,530	74%	8,757	8	.09%

Total Votes Cast in First Gubernatorial Primary

1951	3,646	1959	3,538
1955	3,622	1963	3,739

Source and Explanation of Registration Statistics

Race Identification

The only records photographed have been the poll tax payers list for the years 1954-1962. Race of poll tax payers is reflected on the 1961 and 1962 lists. The list contained the names of only white poll tax payers with the exception of two persons who were identified as being of Mongolian extraction and one whose race was not indicated.

January 1, 1954

Negroes: 8

Source: Henry B. McClellan, Circuit Clerk and Registrar of Holmes County

Explanation: On July 18, 1963, Henry B. McClellan, Circuit Clerk and Registrar of Holmes County told John Doar at his office in Lexington, Mississippi that prior to the summer of 1963 only 8 Negroes were registered and they registered between 1947 and 1954.

White: 3,616

Source: Henry B. McClellan, Circuit Clerk and Registrar
Primary Election Figures.

[fol. 763] Explanation: The minimum number of white persons registered was estimated by subtracting the total number of Negroes registered from the total vote cast for candidates for governor in the first primary August 1955.

Mar. 24, 1955

Negroes: 8
Source: Henry B. McClellan, Circuit Clerk and Registrar of Holmes County.

Explanation: On July 18, 1963, Henry B. McClellan, Circuit Clerk and Registrar of Holmes County told John Doar at his office in Lexington, Mississippi that prior to the summer of 1963 only 8 Negroes were registered and they registered between 1947 and 1948.

Whites: 3,616
Source: Henry B. McClellan, Circuit Clerk and Registrar and 1955 First Primary Election Figures.

Explanation: The minimum number of white persons registered was estimated by subtracting the total number of Negroes registered from the total votes cast for candidates for governor in the first primary August 1955.

January 1, 1960

Negroes: 8
Source: Henry B. McClellan, Circuit Clerk and Registrar of Holmes County

Explanation: On July 18, 1963, Henry B. McClellan, Circuit Clerk and Registrar of Holmes County told John Doar at his office in Lexington, Mississippi that prior to the summer of 1963 only 8 Negroes were registered and they registered between 1947 and 1948.

Whites: 3,530
Source: Henry B. McClellan, Registrar and 1959 First Primary Election Figures

Explanation: The minimum number of white persons registered was estimated by subtracting the total number of Negroes registered from the total votes cast for candidates for governor in the first primary August 1959.

June 1, 1962

Negroes: 8
Source: Henry B. McClellan, Registrar of Holmes County

Explanation: On July 18, 1963, Henry B. McClellan, Circuit Clerk and Registrar of Holmes County told John Doar at his office in Lexington, Mississippi that prior to the summer of 1963 only 8 Negroes were registered and they registered between 1947 and 1948.

[fol. 764] Whites: 3,530

Source: Henry B. McClellan, Registrar and 1959 First Primary Election Figures

Explanation: The minimum number of white persons registered was estimated by subtracting the total number of Negroes registered from the total votes cast for candidates for governor in the first primary in August 1959.

General Information

Name of Present Registrar: Henry B. McClellan
Date Present Registrar Took Office: 1956
Date Records Were Examined: July 18, 1963*

Description of Records Photographed:

Current Registration Books for Period: None
Current Poll Books for Period: None
Old Registration Books: None
Old Poll Books: None
Old Poll Tax Payers Lists: 1954-1962
Application Forms: None

Note: The highest number of poll tax receipts for 1961 was 2,713 and for 1963 was 3,002.

[fol. 765] Leake #51

Date Current Registration Began: ——, 1958

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890	1,907			973		
Jan. 1, 1899	2,303	2,413	100%	1,127	422	27%
Jan. 1, 1954	7,409	7,238	98%	3,835	94	2.45%
Mar. 24, 1955	7,409	5,002	68%	3,835	185	4.8%
Jan. 1, 1960	6,754	4,945	73%	3,397	108	3.2%
June 1, 1962	6,754	5,927	88%	3,397	116	3.4%

Total Votes Cast in First Gubernatorial Primary

1951		1959	5,053
1955	5,187	1963	4,912

* Scheduled to be photographed.

Source and Explanation of Registration Statistics

Race Identification

The current registration books indicate race until January 1, 1960. Thereafter, there are some lapses where the race column is not completed. All Negroes who filled out application forms and registered between January 1, 1960 and June 1, 1962 were identified by the Circuit Clerk and Registrar, L. H. Collier. Therefore, all other names in the registration book whose race is not designated are white.

January 1, 1954

Negroes: 94
Source: Current Registration Books

Explanation: All Negroes registered prior to January 1, 1954 were counted. The total does not include seven Negroes whose names were crossed out and three duplicate entries.

White: 7,238
Source: Current Registration Book

Explanation: All whites registered prior to January 1, 1954 were counted. The total does not include 98 white persons whose names were crossed out.

[fol. 766] March 24, 1955

Negroes: 185
Source: Current Registration Books

Explanation: All Negroes registered prior to March 24, 1955 were counted. The total does not include Negroes whose names are crossed out.

Whites: 5,002
Source: Current Registration Books and 1955 Primary Election figures.

Explanation: The minimum number of white persons registered was estimated from the total number of votes cast in the first gubernatorial primary in August 1955 less the number of Negroes registered prior to March 24, 1955. The total number of names of white persons in the current

registration books registered prior to March 24, 1955 whose names were not crossed out was 8,032.

January 1, 1960

Negroes: 108
Source: Current Registration Books

Explanation: All Negroes who registered prior to January 1, 1960 were counted. The total does not include Negroes whose names were crossed out. The explanation for the decline in Negro registration between March 24, 1955 and January 1, 1960 is that two precincts, Carthage and East Carthage, were divided during this period into four new precincts. Very few of the Negro names in the two old precincts appear in the four new precincts.

White: 4,945
Source: Current Registration Books and 1959 Primary Election figures.

Explanation: The minimum number of white persons registered was estimated from the total number of votes cast in the first gubernatorial primary in August 1959 less the number of Negroes registered prior to January 1, 1960.

June 1, 1962

Negroes: 116
Source: Current Registration Books and statement of Registrar.

Explanation; All Negroes registered prior to June 1, 1962 were counted. This total is inflated. The names of only 41 of the 116 Negroes appear in the current poll books even though persons who are delinquent in the payment of poll tax appear in the current poll books.

Whites: 5,927
Source: Current Poll Books

[fol. 767] Explanation: The total number of names in the current poll books were counted and 41 names were subtracted as they were Negroes.

Note: Immediately prior to the first August 1963 gubernatorial primary, L. H. Collier stated, according to the Carthaginion, the county newspaper, that there were 5,841 qualified voters in Leake County.

General Information

Name of Present Registrar: L. H. Collier
Date Present Registrar Took Office: January 1, 1960
Date Records Were Photographed: December 13, 1962
Description of Records Photographed:

Current Registration Books for Period:

1948 to December 13, 1962.

Current Poll Books for Period:

1960 to December 13, 1962

Old Registration Books for Period: 1934 to 1948
Old Poll Books for Period: None
Application Forms:

Number Made Available: 169

Period of Time they Cover:

January 3, 1960 to December 11, 1962

[fol. 768] Madison #53

Date Current Registration Began: February, 1957

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890	1,428			3,942		
Jan. 1, 1899	1,603	1,150	71%	5,086	125	2.5%
Jan. 1, 1954	5,606	3,880	69%	11,586	279	2.4%
Mar. 24, 1955	5,606	4,302	77%	11,586	476	3.8%
Jan. 1, 1960	5,622	4,568	81%	10,366	120	1.1%
June 1, 1962	5,622	5,458	97%	10,366	121	1.1%

Total Votes Cast in First Gubernatorial Primary

1951	3,410	1959	3,521
1955	3,679	1963	(Incomplete returns)

Source and Explanation of Registration Statistics

Race Identification

Current registration books and current poll books indicate race through 1958 and sporadically through 1959.

January 1, 1954

Negroes: 279
Source: Old registration books, old primary poll books and old general poll books.

Explanation: All Negroes registered prior to January 1, 1954 were counted. The total excludes Negroes whose names were crossed out on the records. Because old registration books were available for only a few precincts, figures for the remaining precincts were taken from the old primary and old general poll books.

Whites: 3,880
Source: Old registration books, old primary poll books, and old general poll books.

[fol. 769] Explanation: All white persons registered prior to January 1, 1954 were counted. The total excludes white persons whose names were crossed out on the records. Because old registration books were available for only a few precincts, figures for the remaining precincts were taken from the old primary and old general poll books.

March 24, 1955

Negroes: 476
Source: Old registration books, old primary poll books and old general poll books.

Explanation: All Negroes registered prior to March 24, 1955 were counted. The total excludes Negroes whose names were crossed out on the records. Because old registration books were available for only a few precincts, figures for the remaining precincts were taken from the old primary and old general poll books.

Whites: 4,302
Source: Old registration books, old primary poll books, old general poll books.

Explanation: All white persons registered prior to March 24, 1955 were counted. The total excludes white persons whose names were crossed out on the records. Because old registration books were available for only a few precincts, figures for the remaining precincts were taken from the old primary and old general poll books.

January 1, 1960

Negroes: 120
Source: Current Registration books (1957 to date of photographing)

Explanation: All Negroes who were shown to be registered in the current registration books prior to January 1, 1959 were counted. No names which appear on the current registration books as crossed out are included in this total.

Whites: 4,568
Source: Current registration books

Explanation: All white persons registered prior to January 1, 1959 were counted. It was also possible by examination of registration records to identify as white persons, twenty-five registrants who registered between January 1, 1959 and January 1, 1960 even though systematic race identification ceases in the books on or about January 1, 1959. Four hundred and sixteen persons who registered between January 1, 1959 and January 1, 1960 were not identified by race on the registration records. These names are included in the white total for January 1, 1960 as the government believes that the vast majority if not all of them are white. Names which appear on the current registration books as crossed out are not included in this total.

[fol. 770] January 1, 1962

Negroes: 121
Source: Current registration books, application forms (July 6, 1960-June 1, 1962, inclusive)

Explanation: The Negro figure for this date represents the total number of Negroes who registered prior to January 1, 1959 and whose names are not crossed out (120). The one additional Negro person was identified by examination of accepted application forms for the period July 5, 1960 to June 1, 1962 inclusive.

Whites: 5,458
Source: Current Registration Books

Explanation: This figure represents the total number of white persons registered prior to January 1, 1959 and

thirty-five names identified as white (4,162), who registered after January 1, 1959 when race identification became sporadic. The additional 1,360 names counted represent all persons registered between January 1, 1959 and June 1, 1962 less the one name identified as Negro. No names which appear on the current registration books and are crossed out are included in this total.

Note: Because it cannot be determined from the records whether systematic or accurate elimination for death or transfer has been practiced in Madison County, some inflation in these figures is probable.

General Information

Name of Present Registrar: L. F. Campbell
Date Present Registrar Took Office: January 1956
Date Records Were Photographed: June 17, 18, and 21, 1963
Description of Records Photographed:

Current Registration Books for Period:

1957 to date of photographing

Current Poll Books for Period:

Primary—1957 to date of photographing
General—January 1957 to date of photographing

Application Forms:

Number Made Available: 502

Period of Time They Covered:

July 5, 1960—June 21, 1963

[fol. 771] Pike #54

Date Current Registration Began: ——, 1937

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890	2,390			1,829		
Jan. 1, 1899	3,310	3,312	100%	2,632	322	12.2%
Jan. 1, 1954	12,147	5,924	48%	7,608	76	.1%
Mar. 24, 1955	12,147	6,683	54%	7,608	100	.13%
Jan. 1, 1960	12,163	7,147	59%	6,936	97	.14%
June 1, 1962	12,163	7,864	65%	6,936	150	.22%

Total Votes Cast in First Gubernatorial Primary

1951	6,788	1959	6,731
1955	6,826	1963	7,075

Source and Explanation of Registration Statistics

Race Identification

The current registration books, current poll books and old poll books indicate race for many registrants between 1955 and 1962. Those registrants unidentified by race in the books were identified by checking the area where the registrant lives, and by interviewing various Negroes who had lived a long time in the county.

January 1, 1954

Negroes: 76
Source: 1954-1962 Poll Books

Explanation: All Negroes registered prior to January 1, 1954 were counted. The total includes seven Negroes registered prior to January 1, 1954 whose names are crossed out.

Whites: 5,868
Source: 1954-1962 Poll Books

[fol. 772] Explanation: All whites registered prior to January 1, 1954 were counted. The total includes 1,389 whites whose names are crossed out. The total includes 56 persons registered prior to January 1, 1954 who are unidentified by race in the books.

March 24, 1955

Negroes: 100
Source: 1954-1962 Poll Books

Explanation: All Negroes registered prior to March 24, 1955 were counted. The total includes seven Negroes registered prior to March 24, 1955 whose names are crossed out.

Whites: 5,103
Source: 1954-1962 Poll Books

Explanation: All whites registered prior to March 24, 1955 were counted. The total includes 1,586 whites registered prior to March 24, 1955 whose names are crossed out. The total includes 132 people registered prior to March 24, 1955 who are unidentified by race in the books.

January 1, 1960

Negroes: 97
Source: 1954-1962 Poll Books

Explanation: All Negroes registered prior to January 1, 1960 were counted. Race is not identified in the poll books for most of the period 1955-1960. Addresses of registrants as entered in the registration books were checked against known Negro areas in Pike County. The names of Pike County Negroes known to the Government were checked against the registration book for this period. Four Negroes, registered between March 24, 1955 and January 1, 1960, were discovered. The total includes these four and excludes seven Negroes registered prior to January 1, 1960 (and prior to March 24, 1955) whose names are crossed out.

Whites: 7,279
Source: 1954-1962 Poll Books

Explanation: All whites registered prior to January 1, 1960 were counted. The total excludes 1,741 persons registered prior to January 1, 1960 whose names are crossed out. The total includes 1,903 persons registered between March 24, 1955 and January 1, 1960, but unidentified by race.

June 1, 1962

Negroes: 150
Source: Current Poll Books

[fol. 773] Explanation: All Negroes registered prior to June 1, 1962 were counted. The total includes 53 Negroes registered between January 1, 1960 and June 1, 1962.

Whites: 7,864
Source: Current Poll Books

Explanation: All persons registered between January 1, 1960 and June 1, 1962 were counted. The 53 Negroes registered in this period were subtracted. The remainder, 717, was added to the figure for white registration as of January 1, 1960. The addresses of the 717 were checked by the FBI and all were found to live in white areas. A list of the 717 was circulated among Negro leaders and none was recognized as Negroes.

General Information

Name of Present Registrar: Wendell Holmes
Date Present Registrar Took Office: 1942
Date Records Were Photographed:

June 18, 1962, December 12, 1962

Description of Records Photographed:

Current Registration Books for Period:

1937 to date of photographing

Current Poll Books for Period:

1962 to date of photographing

Old Registration Books: None
Old Poll Books: 1954-1962
Application Forms:

Number Made Available:

Period of Time They Cover:

[fol. 774] Rankin #55

Date Current Registration Began: ——, 1954

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890	1,639			1,825		
Jan. 1, 1899	1,919	2,182	100%	2,301	276	12%
Jan. 1, 1954	9,829	5,711	58%	7,295	33	.45%
Mar. 24, 1955	9,829	5,711	58%	7,295	43	.59%
Jan. 1, 1960	13,246	10,000	75%	6,944	66	.95%
June 1, 1962	13,246	12,000	90%	6,944	94	1.35%

Total Votes Cast in First Gubernatorial Primary

1951	5,545	1959	5,342
1955	5,308	1963	8,669

Source and Explanation of Registration Statistics

Race Identification

The current registration books and current poll books indicate the race of all registrants.

January 1, 1954

Negroes: 33

Source: Master's Thesis of James F. Barnes submitted at the University of Mississippi in August 1955.

Explanation: The thesis cited above indicates that 33 Negroes were registered.

Whites: 5,711

Source: 1955 Primary election figures and current Registration Books.

Explanation: All Negroes registered prior to March 24, 1955 were counted. The resultant total was subtracted from the total number of votes cast for candidates for Governor in the first primary of August 1955. The remainder is a minimum figure for white registration.

[fol. 775] March 24, 1955

Negroes: 43

Source: Current Registration Books

Explanation: All Negroes registered prior to March 24, 1955 were counted in the current Registration Books by

Frank E. Schwelb, Attorney for the Government in the Rankin County Circuit Clerk's office on May 30, 1963. Of these, 31 were crossed out. Seventeen of these 31 had notations, "Not Registered" or "Not re-registered". The other 14 were crossed out without explanation. The Negro total is a sum of the 29 persons not crossed out and the 14 crossed out without explanation. The re-registration referred to in the reference to the 17 not included, began in 1954.

Whites: 5,711
Source: 1955 Primary Election figures and current Registration Books

Explanation: The minimum number of white persons registered was estimated from the total number of votes cast in the first gubernatorial primary in August 1955 less the number of Negroes registered prior to March 24, 1955.

January 1, 1960

Negroes: 66
Source: Current Registration Books

Explanation: All Negroes registered between March 24, 1955 and January 1, 1960 were counted. The resultant figure was added to the 29 Negroes registered prior to March 24, 1955 whose names are not crossed out. The total excludes 17 Negroes not re-registered. The total further excludes the 14 crossed out without explanation.

Whites: 10,000
Source: Testimony of J. R. Bradshaw in U. S. v. Edwards.

Explanation: The number of white persons registered is based on the testimony given by the Rankin County Circuit Clerk, J. R. Bradshaw, in the trial of U.S. v. Edwards on May 18, 1963 (Transcript page 87). "The last time that I have a definite check was September a year ago and there were 11,000 and something, but it's my opinion that its close to 13,000 now".

June 1, 1962

Negroes: 94
Source: Current Registration Books

Explanation: All Negroes registered prior to June 1,

1962 were counted by Frank E. Schwelb, Attorney for the Government, in the Rankin County Circuit Clerk's office on May 30, 1963.

Whites: 12,000
Source: Testimony of J. R. Bradshaw, in U.S. v. Edwards

[fol. 776] Explanation: The number of white persons registered is based on the testimony given by the Rankin County Circuit Clerk, J. R. Bradshaw, in the trial of U. S. v. Edwards on May 18, 1963 (Transcript page 87). "The last time that I have a definite check was September a year ago and there were 11,000 and something, but it's my opinion that its close to 13,000 now".

General Information

Name of Present Registrar: J. R. Bradshaw
Date Present Registrar Took Office: January 1, 1956
Dates Records were Photographed:

Scheduled for photographing

Description of Records Photographed:**

Current Registration Books for Period:
Current Primary Poll Books:
Old Registration Books:
Old Poll Books:
Application Forms:

Number made available:

Period in Time They Cover:

** These records were examined by plaintiff's attorneys and are scheduled for photographing.

[fol. 777] Clarke #59

Date Current Registration Began: ——, 1953

	Whites Over 21	Whites Reg'd.	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890	1,543			1,356		
Jan. 1, 1899	1,936	1,822	94%	1,574	32	2%
Jan. 1, 1954	6,699	3,435	52%	3,849	0	0%
Mar. 24, 1955	6,699	3,856	58%	3,849	0	0%
Jan. 1, 1960	6,072	4,611	77%	2,998	0	0%
June 1, 1962	6,072	5,000	83%	2,998	1	.03%

Total Votes Cast in First Gubernatorial Primary

1951	4,587	1959	4,540
1955	4,430	1963	4,358

Source and Explanation of Registration Statistics

Race Identification

The current registration books and current poll books indicate the race of all registrants.

January 1, 1954

Negroes: 0
Source: Current Registration Books

Explanation: No Negroes registered prior to January 1, 1954 appear in the registration books.

Whites: 3,435
Source: Current Registration Books

Explanation: All whites registered prior to January 1, 1954 were counted. The total includes whites registered prior to January 1, 1954 whose names are crossed out. Duplications due to transfers from one precinct to another within the county were eliminated by typing cards for every name in the books, arranging these cards alphabetically, and eliminating extra cards for people who had transferred within the county.

[fol. 778] March 24, 1955

Negroes: 0
Source: Current Registration Books

Explanation: No Negroes registered prior to March 24, 1955 appear in the registration book.

Whites: 3,856
Source: Current Registration Books

Explanation: All whites registered prior to March 24, 1955 were counted. Duplications due to transfers from one precinct to another within the county were eliminated by typing cards for every name in the books, arranging these cards alphabetically, and eliminating extra cards for people who had transferred within the county.

January 1, 1960

Negroes: 0
Source: Current Registration Books

Explanation: No Negroes registered prior to January 1, 1960 appear in the registration book.

White: 4,611
Source: Current Registration Book and testimony of A. L. Ramsey in U. S. v. Ramsey, et al

Explanation: All whites registered between January 1, 1960 and June 1, 1962 were counted. The resultant total was subtracted from the registration figure for June 1, 1962 to give the registration figure for January 1, 1960.

June 1, 1962

Negroes: 1
Source: Current Registration Book

Explanation: One Negro registered prior to June 1, 1962 (Samuel Owen, Enterprise Precinct, Date Registered, June 29, 1961).

Whites: 5,000
Source: Testimony of A. L. Ramsey in U. S. v. Ramsey, et al.

Explanation: The white figure for this date is based on the testimony of A. L. Ramsey, Circuit Clerk of Clarke County, given in the trial of U. S. v. Ramsey, et al, No. 1084, Southern District of Mississippi on December 27, 1962. (See page 1157 of Record on Appeal.

General Information

Name of Present Registrar: A. L. Ramsey
Date Present Registrar Took Office: October 6, 1953
[fol. 779] Dates Records were Photographed:

July 11 and 12, 1962

Description of Records:

Current Registration Books for Period: 1953 to date
Current Poll Books for Period:

1960 to date of photographing

Old Registration Books for Period: 1900 to 1953
Old Poll Books: None
Application Forms:

Number Made Available: 180

Period of Time They Cover:

May 8, 1960 to July, 1962

[fol. 780] Kemper #61

Date Current Registration Began: ——, 1953

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890	1,654			1,751		
Jan. 1, 1899	1,887	1,820*	98.5%	2,147	243*	11.3%
Jan. 1, 1954	3,816	3,041	79%	4,023	30	.2%
Mar. 24, 1955	3,816	3,628	95%	4,023	25	.6%
Jan. 1, 1960	3,113	3,213	100%	3,221	29	.9%
June 1, 1962	3,113	3,224	100%	3,221	30	.9%

Total Votes Cast in First Gubernatorial Primary

1951	3,633	1959	3,242
1955	3,648	1963	2,658

* 1896 registration figures—1899 figures were not available.

Source and Explanation of Registration Statistics

Race Identification

The current registration books generally indicate race but race is omitted for some registrants. The current poll books do not indicate race.

January 1, 1954

Negroes: 10
Source: Current Registration Books

Explanation: All Negroes registered prior to January 1, 1954 were counted. No names of Negroes registered prior to January 1, 1954 are crossed out.

[fol. 781] Whites: 3,041
Source: Current Registration Books

Explanation: All whites registered prior to January 1, 1954 were counted. The total includes 25 whites whose names are crossed off. The total excludes 262 persons registered prior to January 1, 1954 who are unidentified by race.

March 24, 1955

Negroes: 25
Source: Current Registration Books

Explanation: All Negroes registered prior to March 24, 1955 were counted. No names were crossed out.

White: 3,625
Source: 1955 Primary election figures and Current Registration Books

Explanation: The minimum number of white persons registered was estimated from the total number of votes cast for candidates for Governor in the first primary of August 1955 less the total number of known Negroes registered as of March 24, 1955. 801 persons registered prior to March 24, 1955 appear in the book without race identification.

January 1, 1960

Negroes: 29
Source: Current Registration Book

Explanation: All Negroes registered prior to January 1, 1960 were counted. No names are crossed out.

Whites: 3,213
Source: 1959 Primary election figures and Current Registration Book

Explanation: The minimum number of white persons registered was estimated from the total votes cast for candi-

dates for Governor in the August 1959 primary less the number of known Negroes registered as of June 1, 1960. 1,131 persons registered prior to January 1, 1960 appear in the book without race identification.

[fol. 782] June 1, 1962

Negroes: 30
Source: Current Registration Book

Explanation: All Negroes registered prior to June 1, 1962 were counted. No names are crossed out.

Whites: 3,224
Source: 1959 Primary election figures and Current Registration Book

Explanation: All whites registered between January 1, 1960 and June 1, 1962 were counted. The resultant figure was added to the white registration figure for January 1, 1960. The total includes persons who voted in 1959 but died or moved away before June 1, 1962. The total excludes 119 persons unidentified by race who registered between January 1, 1960 and June 1, 1962.

General Information

Name of Present Registrar: James G. Palmer
Date Present Registrar Took Office: 1953 (approximately)
Date Records Were Photographed: July 29, 1963
Description of Records Photographed:

Current Registration Books for Period: 1953 to date
Current Poll Books for Period: 1953 to July 29, 1963
Old Registration Books: None
Old Poll Books: None
Application Forms:

Number Made Available: 300

Period of Time They Cover:

June 3, 1960 to July 8, 1963

[fol. 783] Lauderdale #62

Date Current Registration Began: ——, 1948

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890	3,507			2,914		
Jan. 1, 1899	4,664	2,895	60%	3,858	386	10%
Jan. 1, 1954	26,598	11,850	45%	12,965	1,282	9.9%
Mar. 24, 1955	26,598	11,850	45%	12,965	1,542	12%
Jan. 1, 1960	27,806			11,924		
June 1, 1962	27,806	*		11,924	*	

Total Votes Cast in First Gubernatorial Primary

1951	12,933	1959	13,253
1955	13,394	1963	15,456

*1960 and 1962 figures not yet available because of race identification problem.

Source and Explanation of Registration Statistics

Race Identification

The current registration books indicate race through 1955. We have not yet identified the race of registrants subsequent to 1955.

January 1, 1954

Negroes: 1,282
Source: Current Registration Book

Explanation: All Negroes registered prior to January 1, 1954 were counted. The total excludes 98 Negroes whose names are crossed out.

White: 11,850
Source: 1955 Primary Election Figures and Current Registration Book.

Explanation: The minimum number of whites registered was estimated by subtracting the number of Negroes registered prior to March 24, 1955 from the total number of votes cast for candidates for governor in the first August 1955 primary.

[fol. 784] March 24, 1955

Negroes: 1,542
Source: Current Registration Book

Explanation: All Negroes registered prior to March 24,

1955 were counted. The total excludes 116 Negroes whose names are crossed out.

Whites: 11,850
Source: Current Registration Book and 1955 Primary Election Figures.

Explanation: The minimum number of whites registered was estimated by subtracting the number of Negroes registered prior to March 24, 1955 from the total number of votes cast for candidates for governor in the first August 1955 primary.

General Information

Name of Present Registrar: Preston P. Coleman
Date Present Registrar Took Office: 1952
Dates Records Were Photographed: December 6 and 7, 1962
Description of Records:

Current Registration Books for Period:

1948 to date of photographing

Current Poll Books for Period: None
Old Registration Books for Period: None
Old Poll Books for Period: None
Application Forms:

Number Made Available: 770

Period in Time They Cover:

Jan. 9, 1960 to Dec. 17, 1962

Note: 1960 and 1962 figures not yet available because of race identification problem.

[fol. 785] Newton #64

Date Current Registration Began: ——, 1945

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890	2,096			1,163		
Jan. 1, 1899	2,519	2,572	100%	1,453	82	5.6%
Jan. 1, 1954	8,727	4,511	52%	3,687	79	2.1%
March 24, 1955	8,727	4,874	56%	3,687	100	2.7%
Jan. 1, 1960	8,014	5,003	62%	3,018	103	2.8%
June 1, 1962	8,014	5,700	71%	3,018	104	2.8%

Total Votes Cast in First Gubernatorial Primary

1951	4,731	1959	5,029
1955	4,974	1963	5,147

Source and Explanation of Registration Statistics

Race Identification

The current registration books indicate the race of all registrants through November 1962.

January 1, 1954

Negroes: 79
Source: Current Registration Books

Explanation: All Negroes registered prior to January 1, 1954 were counted.

Whites: 4,511
Source: Current Registration Books and 1955 Primary Election Totals

Explanation: The minimum number of white persons registered was estimated from the total number of votes cast for candidates for governor in the first primary of August 1955 less the 79 Negroes registered as of March 24, 1955 less 363 whites shown in the registration books to have been registered between January 1, 1954 and March 24, 1955.

[fol. 786] March 24, 1955

Negroes: 100
Source: Current Registration Books

Explanation: All Negroes registered prior to March 24, 1955 were counted.

Whites: 4,874
Source: Current Registration Books and 1955 Primary Election Totals

Explanation: The minimum number of white persons registered was estimated from the total number of votes cast for candidates for governor in the first primary in August 1955 less the total number of Negroes shown in the current registration books to have been registered as of March 24, 1955

January 1, 1960

Negroes: 103
Source: Current Registration Book

Explanation: All Negroes registered prior to January 1, 1960 were counted.

Whites: 5,003
Source: Current Poll Books

Explanation: All white persons registered prior to January 1 1,960 were counted.

June 1, 1962

Negroes: 104
Source: Current Registration Books

Explanation: All Negroes registered prior to June 1, 1962 were counted.

Whites: 5,700
Source: Current Poll Books

Explanation: All whites registered prior to June 1, 1962 were counted.

Note: It was impossible to use the current registration books in compiling the figures for white persons registered. No names are crossed out in the books and the totals they give are substantially inflated. For example, the registration books indicate that 12,949 white persons were registered as of June 1, 1962 (white over 21 population 8,014). On the other hand, the poll book figures used for the 1960 and 1962 dates may be somewhat low as the poll books were re-done in 1963 and do not show poll tax delinquents.

[fol. 787] Note: The registration books were used throughout in compiling the figures for Negroes. The figures are thus subject to the same degree of inflation discussed above.

General Information

Name of Present Registrar: W. Harold Webb
Date Present Registrar Took Office: 1948
Date Records Were Photographed: August 12, 1963
Description of Records Photographed:

Current Registration Books for Period:

1945 to date of photographing

Current Poll Books for Period: 1963
Old Poll Books for Period: None
Old Registration Books for Period: None
Application Forms:

Number Made Available: 250

Period in Time They Cover:

1961 to date of photographing

[fol. 788] Covington #67

Date Current Registration Began: ——, 1949

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jar. 1, 1890	1,053			487		
Jan. 1, 1899	1,935	1,526	79%	944	497	50%
Jan. 1, 1954	5,932	4,441	75%	2,354	436	18.5%
Mar. 24, 1955	5,932	4,973	84%	2,354	665	28%
Jan. 1, 1960	5,329	3,640	68%	2,032	687	34%
June 1, 1962	5,329	3,991	75%	2,032	702	35%

Total Votes Cast in First Gubernatorial Primary

1951	4,472	1959	4,327
1955	4,559	1963	4,193

Source and Explanation of Registration Statistics

Race Identification

The current registration books and current poll books indicate race of all registrants.

January 1, 1954

Negroes: 436
Source: Current Registration Books

Explanation: All Negroes registered prior to January 1, 1954 were counted. The total excludes eight Negroes whose names are crossed out.

[fol. 789] Whites: 4,441
Source: Current General and Primary Poll Books

Explanation: All whites registered prior to January 1, 1954 were counted. The count was made in the General Poll Books and in precincts where these are illegible, the count was made in the Primary Poll Books. The total excludes 469 whites registered prior to January 1, 1954 whose names are crossed out.

March 24, 1955

Negroes: 665
Source: Current Registration Books

Explanation: All Negroes registered prior to March 24, 1955 were counted. The total excludes 22 Negroes registered prior to March 24, 1955 whose names are crossed out.

Whites: 4,973
Source: Current General and Primary Poll Books

Explanation: All whites registered prior to March 24, 1955 were counted. The count was made in the General Poll Books and in precincts where these are illegible, the count was made in the Primary Poll Books. The total excludes 524 whites registered prior to March 24, 1955 whose names are crossed out.

January 1, 1960

Negroes: 687
Source: Current Registration Books

Explanation: All Negroes registered prior to January 1, 1960 were counted. The total excludes 22 Negroes registered prior to January 1, 1960 whose names are crossed out.

Whites: 3,640
Source: 1959 Primary Election Totals for Candidates for Governor and Current Registration Books

Explanation: The minimum number of white persons registered was obtained by subtracting the total number of Negroes registered on January 1, 1960 from the total number of votes cast for candidates for Governor in the first primary in August, 1959

[fol. 790] June 1, 1962

Negroes: 702
Source: Current Registration Books

Explanation: All Negroes registered prior to June 1, 1962 were counted. The total excludes 22 Negroes registered prior to June 1, 1962 whose names are crossed out.

Whites: 3,640
Source: 1959 Primary Election Totals for Candidates for Governor and Current Registration Books and Current Poll Books

Explanation: The minmum number of white persons registered was obtained by subtracting the total number of Negroes registered on January 1, 1960 from the total number of votes cast for candidates for Governor in the first primary in August 1959, and adding the total number of white persons (351) whose names appear on the current poll books as having registered between January 1, 1960 and June 1, 1962.

Note: The registration and poll books were not accurately purged. Therefore, election figures had to be used for the 1960 and 1962 dates in the case of white registration. The poll book counts of white persons registered on those dates were 6,025 and 6,376.

General Information

Name of Present Registrar: A. B. Gordon
Date Present Registrar Took Office: 1960
Date Records were Photographed: July 22, 1963
Description of Records Photographed:

Current Registration Books for Period: 1949 to date
Current Poll Books for Period (Primary): 1949 to date
Current Poll Books for Period (General): 1949 to date
Old Registration Books: None
Old Poll Books: None
Application Forms:

Number Made Available:

Period of Time They Cover:

June 25, 1962 to date of photographing

[fol. 791] Forrest #68

Date Current Registration Began: ——, 1949

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890						
Jan. 1, 1899						
Jan. 1, 1954	19,708	9,123	46%	7,406	7	.09%
March 24, 1955	19,708	9,123	46%	7,406	12	.16%
Jan. 1, 1960	22,431	10,385	46%	7,495	12	.16%
June 1, 1962	22,431	12,655	57%	7,495	22	.3%

Total Votes Cast in First Gubernatorial Primary

1951	8,836	1959	10,397
1955	9,135	1963	10,925

*Forrest County does not appear from the records to have been formed until after 1900.

Source and Explanation of Registration Statistics

Race Identification

The current registration book indicates race.

January 1, 1954

Negroes: 7
Source: Current Registration Book

Explanation: All Negroes registered prior to January 1, 1954 were counted.

Whites: 9,123
Source: 1955 Primary Election figures and Current Registration Book

Explanation: The minimum number of white people registered was estimated from the total number of votes cast for candidates for governor in the first primary in August 1955 (9,135) less the number of Negroes shown in the registration book to have registered prior to August 1955 (12).

[fol. 792] March 24, 1955

Negroes: 12
Source: Current Registration Books

Explanation: All Negroes (5) registered between January 1, 1954 and March 24, 1955 were counted on May 26, 1955 in the current registration book by agents of the FBI. The Negro registration figure for this date is the sum of these 5 Negroes and the 7 registered prior to January 1, 1954.

Whites: 9,123
Source: 1955 Primary Election Figures and Current Registration Book.

Explanation: The minmum number of white people registered was estimated from the total number of votes cast for candidates for governor in the first primary in August 1955 (9,135) less the number of Negroes shown in the registration book to have registered prior to August 1955 (12).

January 1, 1960

Negroes: 12
Source: Current Registration Book

Explanation: Finding of Fact 6.0 in the contempt findings in U. S. v. Lynd stated: "The records, which until March 18, 1962 reflected race of the registrants, show that with the exception of two transfers, no Negroes registered in Forrest County between February 13, 1954 and April 18, 1962."

Whites: 10,385
Source: 1959 Primary Election Figures and Current Registration Book

Explanation: The minimum number of white people registered was estimated from the total number of votes cast for candidates for governor in the first primary in August 1959 (10,397) less the number of Negroes registered as of August 1959 (12).

June 1, 1962

Negroes: 22
Source: Current Registration Book

Explanation: All Negroes registered prior to June 1, 1962 were counted.

Whites: 12,655
Source: Statement of Theron B. Lynd to the Hattiesburg American.

Explanation: Mr. Lynd told the Hattiesburg American that there were 12,677 qualified voters on June 1, 1962, the figure given in the table for white registration is 12,677 less the 22 Negroes registered as of June 1, 1962. (See Hattiesburg American, April 5, 1963). This total does not include persons delinquent in payment of poll taxes.

[fol. 793] General Information

Name of Present Registrar: Theron B. Lynd
Date Present Registrar Took Office: February 28, 1959
Date Records were Photographed: March 1962; July, 1962.
Description of Records Photographed:

Current Registration Books for Period:

1949 to date of photographing

Current Primary Poll Books for Period:

1949 to date of photographing
Old Registration Books: None
Old Poll Books: None
Application Forms:

Number Made Available: Approximately 1,000

Period of Time They Cover:

November 8, 1960 to August, 1962

[fol. 794] Greene #69

Date Current Registration Began: September, 1963

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890	614			188		
Jan. 1, 1899	1,148	759*	66%	456	75*	16.5%
Jan. 1, 1954	3,491	750	21%	758	3	.4%
Mar. 24, 1955	3,491	3,094	88%	758	43	5.7%
Jan. 1, 1960	3,158	3,154	90%	859	46	5.4%
June 1, 1962	3,518	3,000	85%	859	43	5%

Total Votes Cast in First Gubernatorial Primary

1951	3,012	1959	3,200
1955	3,137	1963	3,583

*1896 Registration figures. Source does not show 1899 figures for this county.

Source and Explanation of Registration Statistics

Race Identification

The current registration book and current poll books indicate the race of all registrants.

January 1, 1954

Negroes: 3
Source: Current Primary Poll Books.

Explanation: All Negroes registered prior to January 1, 1954 were counted. The total includes two Negroes whose names are crossed out in the books with a notation indicating they are dead.

Whites: 750
Source: Current Primary Poll Books

[fol. 795] Explanation: All whites registered prior to January 1, 1954 were counted. The total includes 186 whites whose names are crossed out in the books.

March 24, 1955

Negroes: 43
Source: Current Primary Poll Books

Explanation: All Negroes registered prior to March 24, 1955 were counted. The total includes Negroes whose names are crossed out.

Whites: 3,094
Source: 1955 Primary Election Figures and Current Primary Poll Books

Explanation: The total number of white persons registered was estimated by subtracting the number of Negroes registered prior to March 24, 1955 from the total number of votes cast for candidates for governor in the first primary in August 1955.

January 1, 1960

Negroes: 46
Source: Current Primary Poll Books

Explanation: All Negroes registered prior to January 1, 1960 were counted.

Whites: 3,154
Source: 1959 Primary Election figures and current Primary Poll Books

Explanation: The total number of white persons registered was estimated by subtracting the number of Negroes registered prior to January 1, 1960 from the total number of votes cast for candidates for governor in the first primary in August 1959.

June 1, 1962

Negroes: 43.
Source: Current Primary Poll Books and Testimony in U.S. v. Greene County Board of Education

Explanation: All Negroes (49) registered prior to June 1, 1962 were counted. It was established in testimony in U.S. v. Greene County Board of Education that only 43 of these Negroes were alive and in the county. (See U.S. v. Board of Education of Greene County, Civil Action 1729, Southern District of Mississippi, transcript for August 2, 1962, pp. 22-40).

Whites: 3,000
Source: Current Primary Poll Books

Explanation: All whites registered prior to January 1, 1962 were counted. The total excludes 1,553 whites registered prior to June 1, 1962 whose names are crossed out.

[fol. 796] General Information

Name of Present Registrar: Lloyd E. Perry
Date Present Registrar Took Office: 1956
Date Records Were Photographed: July 27, 1962
Description of Records Photographed:

Current Registration Books for Period:

September 1953 to date of photographing

Current Primary and General Poll Books:

September 1953

Old Registration Books: None
Old Poll Books: None
Application Forms:

Number Made Available: 750
Period They Covered: April 8, 1955 to July 19, 1962

[fol. 797] Jefferson Davis #70

Date Current Registration Began: February 8, 1956

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890*						
Jan. 1, 1899						
Jan. 1, 1954	3,847	2,842	74%	3,923	891	22%
Mar. 24, 1955	3,847	2,842	74%	3,923	1,246	32%
Jan. 1, 1960	3,629	3,085	85%	3,222	63	1.95%**
June 1, 1962	3,629	3,600	99%	3,222	76	2.36%

Total Votes Cast in First Gubernatorial Primary

1951	3,644	1959	3,148
1955	4,088	1963	3,305

* The records seem to indicate that Walthall County was not formed until after 1900.

** A complete reregistration was ordered in 1956. Four years later Negro registration had decreased from its 1955 high of 1,246 to only 63.

Source and Explanation of Registration Statistics

Race Identification

The old registration books (1905-1955) indicate race of all electors. Race of all but 1,200 electors in the current registration books is established by cross checking the entries on the current books with the old books. In United

States v. Daniel and the State of Mississippi, Civil Action No. 1655, United States District Court for the Southern District of Mississippi.

[fol. 798] District of Mississippi, the parties stipulated as to the race of the 1,200 electors. Their race is found in Exhibit I received in evidence pursuant to stipulation which is also reported at page 292-293 of transcript of hearing before Judge Harold J. Cox on October 23, 1962 at Hattiesburg, Mississippi.

January 1, 1954

Negroes: 891
Source: 1949-1955 Registration Books

Explanation: All Negroes registered prior to January 1, 1954 were counted in the 1949-1955 registration books.

Whites: 2,842
Source: 1955 Gubernatorial Primary Total and 1949-1955 Registration Books

Explanation: This is an approximate number of whites registered. The total number (1,246) of Negroes registered prior to March 24, 1955 were counted in the 1949-1955 registration books and then subtracted from the total number of votes cast for candidates for Governor by voters in Jefferson Davis County in the first primary in August 1955. This total is an approximation because it assumes that all Negroes registered on March 22, 1955 voted; it includes white persons who registered between January 1, 1954 and July 7, 1955 who voted in the primary; because it may include Negroes who registered between March 24, 1954 and July 7, 1955 and who voted in the primary.

March 24, 1955

Negroes: 1,246
Source: 1949-1955 Registration Books

Explanation: All Negroes registered prior to March 24, 1955 were counted in the 1949-1955 registration books.

Whites: 2,842
Source: 1955 Gubernatorial Primary Total and 1949-1955 Registration Books

Explanation: This is an approximate number of whites registered. The total number (1,246) of Negroes registered prior to March 24, 1955 were counted in the 1949-1955 registration books and then subtracted from the total number of votes cast for candidates for Governor by voters in Jefferson Davis County in the first primary in August 1955. This total is an approximation because it assumes that all Negroes registered on March 24, 1955 voted; because it includes white persons registered between March 24, 1955 [fol. 799] and July 7, 1955 who voted in the primary; and because it may include Negroes who registered between March 24, 1955 and July 7, 1955 and who voted in the primary.

January 1, 1960

Negroes: 63
Source: Current Registration Books

Explanation: All Negroes registered prior to January 1, 1960 were counted. The total excludes one Negro girl (Rose Powell, Carson Precinct) who was 21 in 1956 and is believed to have left the county prior to January 1, 1960.

Whites: 3,085
Source: 1959 Gubernatorial Primary Total and Current Registration Books

Explanation: This is an approximate number of whites registered. The total number (63) of Negroes registered prior to January 1, 1960 was counted in the current registration books and then subtracted from the total number of votes cast for candidates for Governor by voters in Jefferson Davis County in the first primary in August 1959.

June 1, 1962

Negroes: 76
Source: Current Registration Books

Explanation: All Negroes registered prior to June 1, 1962 were counted. The total excludes five Negroes (Rose

Powell, Carson Precinct; J. E. Clark, South Prentiss Precinct; B. F. Richmond, South Prentiss Precinct; Reed Hall, Mt. Carmel Precinct and Harry P. Morris, Carson Precinct). Their names were listed in the registration book as having either died or moved.

Whites: 3,600
Source: Current Registration Books

Explanation: All whites registered prior to June 28, 1962 were counted. The total does not include names crossed out.

[fol. 800] General Information

Name of Present Registrar: James Daniel
Date Present Registrar Took Office: January 1956
Dates Records Were Photographed: June 28, 1962
Description of Records Photographed:

Current Registration Books for Period: 1956 to Present
Current Poll Books for Period: 1956 to present
Old Registration Books for Periods: 1905 to 1922; 1923 to 1934; 1935 to 1948; 1949 to 1955

Note: Each of these periods represents a new registration period.

Old Poll Books: None
Application Forms:

Number Made Available: 13
Period in Time They Cover: April 29, 1962 to June 28, 1962

Note: The registrar, in Darby v. Daniel, testified that there had been 23 volumes of application forms, each containing approximately 78 forms, in existence since 1956, but these were destroyed. This would have included about 2,500 forms.

[fol. 801] 'Lamar #72

Date Current Registration Began: ——, 1952

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd.	%
Jan. 1, 1890	*					
Jan. 1, 1899						
Jan. 1, 1954	6,115	2,041	33%	1,118	0	0%
Mar. 1, 1955	6,115	4,385	72%	1,118	0	0%
Jan. 1, 1960	6,489	4,684	76%	1,071	0	0%
June, 1962	6,489	5,593	91%	1,071	0	0%

Total Votes Cast in First Gubernatorial Primary

1951	4,497	1959	4,684
1955	4,385	1963	4,099

*The records seem to indicate that Lamar County was not formed until after 1900.

Source and Explanation of Registration Statistics

Race Identification

The current registration books and the current poll books indicate race to January 1, 1962. There are 90 names whose race is not identified listed in the current registration books between January 1, 1962 and June 1, 1962. On the basis of interviews with Negroes within the county, the government believes all 90 of these persons to be white.

January 1, 1954

Negroes: 0
Source: Current Registration Books

Explanation: There are no Negro names in the current registration books with dates of registration prior to January 1, 1954.

Whites: 2,041
Source: Current Registration Books and total votes cast in first August 1955 primary for governor.

[fol. 802] Explanation: The names of all white persons with dates of registration between January 1, 1954 and March 24, 1955 were counted. The total (2,344) was subtracted from the total number of votes cast in the first gubernatorial primary in August, 1955.

March 24, 1955

Negroes: 0
Source: Current registration books

Explanation: There are no Negro names on the current registration books with dates of registration prior to March 24, 1955.

Whites: 4,385
Source: Total votes cast for governor in first primary August, 1955.

Explanation: The minimum number of white persons registered was estimated as the total number of votes cast at the first primary for governor in August 1955.

January 1, 1960

Negroes: 0
Source: Current registration books

Explanation: There are no Negroes in the current registration books with dates of registration prior to January 1, 1960.

Whites: 4,684
Source: Total votes cast for governor in the first gubernatorial primary in August, 1959.

Explanation: The minimum number of white persons registered was estimated as the total number of votes cast in the first gubernatorial primary in August, 1959.

June 1, 1962

Negroes: 0
Source: Current registration book and interview with registrar.

Explanation: There are no Negroes in the current registration books with dates of registration prior to June 1, 1962.

[fol. 803] Whites: 5,593
Source: Current poll books and total vote cast in first primary for governor August 1959.

Explanation: The total number of white persons registered was determined by adding 819 white persons whose names appear in the current poll books with dates of registration between January 1, 1960 and June 1, 1962 and adding 90 persons whose names appear in the current poll books with dates of registration between January 1, 1962 and June 1, 1962 but whose race is not designated to the total number of votes cast for governor in the first primary in August 1959. Investigation by the government discloses that all of these 90 persons are white.

General Information

Name of Present Registrar: Talmadge Saucier
Date Registrar Took Office:

1960 (Previous terms 1948-51 and 1951-56)

Date of Photographing: July 25, 1963
Description of Records Photographed:

Current Registration Books for Period:

1952 to date of photographing

Current Poll Books for Period:

1952 to date of photographing

Old Registration Books: None
Old Poll Books: None
Application Forms:

Number Made Available: 463
Period in Time They Cover:

July 18, 1960 to July 5, 1963

[fol. 804] Marion #74

Date Current Registration Began: ——, 1953

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1900	1,314			542		
Jan. 1, 1899	1,946	1,344	69%	817	386	47%
Jan. 1, 1954	9,004	3,147	35%	4,103	66	1.6%
Mar. 24, 1955	9,004	6,705	74%	4,103	312	7.7%
Jan. 1, 1960	8,997	8,435	95%	3,630	339	9.3%
June 1, 1962	8,997	9,450	100%	3,630	363	10%

Total Votes Cast in First Gubernatorial Primary

1951	6,495	1959	6,818
1955	7,017	1963	6,390

Source and Explanation of Registration Statistics

Race Identification

Current registration books indicate the race of all registrants. The current poll books do not indicate race.

January 1, 1954

Negroes: 66
Source: Current Registration Books

Explanation: All Negroes registered prior to January 1, 1954 were counted. The total includes five Negroes whose names were crossed out. As of January 1, 1954, the registration books were several months old.

Whites: 3,147
Source: Current Registration Books

Explanation: All whites registered prior to January 1, 1954 were counted. The total includes 640 whites whose names are crossed out.

[fol. 805] March 24, 1955

Negroes: 312
Source: Current Registration Books

Explanation: All Negroes registered prior to March 24, 1955 were counted. The total excludes 71 Negroes registered prior to March 24, 1955 whose names are crossed out.

Whites: 6,705
Source: 1955 Primary Election Figures and Current Registration Book

Explanation: The minimum number of white persons registered was estimated from the total number of votes cast for candidates for governor in the first primary in August 1955 less the total number of Negroes registered as of March 24, 1955.

January 1, 1960

Negroes: 339
Source: Current Registration Books

Explanation: All Negroes registered prior to January 1, 1960 were counted. The total excludes 71 Negroes registered prior to January 1, 1960 whose names are crossed out.

Whites: 8,435
Source: Current Registration Books

Explanation: All white registered prior to January 1, 1960 were counted. The total excludes 2,408 whites whose names are crossed out.

June 1, 1962

Negroes: 363
Source: Current Registration Books

Explanation: All Negroes registered prior to June 1, 1962 were counted. The total excludes 74 Negroes registered prior to June 1, 1962 whose names are crossed out.

Whites: 9,540
Source: Current Registration Books

Explanation: All whites registered prior to June 1, 1962 were counted. The total excludes 2,528 whites registered prior to June 1, 1962 whose names are crossed out. Comparison with the population figure for this date shows this figure to be inflated. This is undoubtedly due to incomplete purging of the registration books.

General Information

Name of Present Registrar: Mrs. John Mikell
Date Present Registrar Took Office: 1961
[fol. 806] Date Records Were Photographed: July 26, 1963
Description of Records Photographed:

Current Registration Books for Period:

Late 1953 to date.

Old Poll Books for Period: None
Old Registration Books for Period: None
Current Poll Books for Period: Late 1953 to date
Application Forms:

Number Made Available: 663

Period in Time They Cover:

September 5, 1962-July 23, 1963

[fol. 807] Walthall #76

Date Current Registration Began: ——, 1946

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890*						
Jan. 1, 1899						
Jan. 1, 1954	4,735	3,485	81%	3,017	0	0%
Mar. 24, 1955	4,735	3,845	81%	3,017	0	0%
Jan. 1, 1960	4,736	3,903	83%	2,490	0	0%
June 1, 1962	4,736	4,219	89%	2,490	2	.08%

Total Votes Cast in First Gubernatorial Primary

1951	3,465	1959	3,903
1955	3,845	1963	3,986

* The records seem to indicate that Walthall County was not formed until after 1900.

Source and Explanation of Registration Statistics

Race Identification

Current poll books indicate the race of all registrants. The current registration books indicate race but with frequent omissions.

January 1, 1954

Negroes: 0
Source: Testimony of John Q. Wood, Walthall County Circuit Clerk in United States v. Wood (Transcript pp. 381-384)

[fol. 808] Explanation: The total number of Negro persons registered was established in testimony by Walthall County Circuit Clerk, John Q. Wood, in the hearing of United States v. Wood, Civil Action No. 1656, Southern District of Mississippi, on April 8, 1963.

Whites: 3,845
Source: 1955 Primary Election Figures

Explanation: The minimum number of white persons is estimated to be equal to the number of votes cast for candidates for governor in the first primary of August, 1955. There were no Negroes registered at that date.

March 24, 1955

Negroes: 0
Source: Testimony of John Q. Wood, Walthall County Circuit Clerk, in United States v. Wood (Transcript pp. 381-384)

Explanation: The total number of Negro persons registered is established in testimony by Walthall County Circuit Clerk, John Q. Wood, in the hearing of United States v. Wood.

Whites: 3,845
Source: 1955 Primary Election Figures

Explanation: The minimum number of white persons registered is estimated to be equal to the number of votes cast for candidates for governor in the first primary of

August, 1955. There were no Negroes registered at that date.

January 1, 1960

Negroes: 0
Source: Testimony of John Q. Wood, Walthall County Circuit Clerk, in United States v. Wood (Transcript pp. 381-384)

Explanation: The total number of Negro persons registered is established in the testimony by Walthall County Circuit Clerk, John Q. Wood, in the hearing of United States v. Wood.

[fol. 809] Whites: 3,903
Source: 1959 Primary Election Figures

Explanation: The minimum number of white persons registered is estimated to be equal to the number of votes cast for candidates for governor in the first primary of August, 1959. There were no Negroes registered at that date.

June 1, 1962

Negroes: 2
Source: Testimony of John Q. Wood, Walthall County Circuit Clerk, in United States v. Wood (Transcript pp. 381-384)

Explanation: The total number of Negro persons registered is established in testimony by Walthall County Circuit Clerk, John Q. Wood, in the hearing of United States v. Wood.

The count of the poll book and registration books corroborates this testimony. Two Negroes, Ezra Conerly and Milton A. Huey were registered on September 26, 1961 and September 27, 1961. A third Negro, Ruby Magee, was registered after June 1, 1962.

Whites: 4,219
Source: Current Poll Books and 1959 Primary Election Figures

Explanation: All whites registered between January 1, 1960, and June 1, 1962, were counted. That total was added to the white registration figure for January 1, 1960.

Note: It was necessary to use election figures in 1954, 1955 and 1960 because there is an extremely large number of cross outs in both the poll books and the registration books. These books were begun in 1946 and it is impossible to tell when these cross outs were made.

It was possible to count in the current poll books for the period between 1960 and 1962 because registrations in that period are more recent and there were virtually no cross outs in this period.

[fol. 810] General Information

Name of Present Registrar: John Q. Wood
Date Present Registrar Took Office: August 1, 1961
Dates Records were Photographed:

July 9, 1962, and April 8, 1963

Description of Records Photographed:

Current Registration Books for Period:

1946 to date of second photographing

Current Poll Books for Period:

1946 to date of second photographing
Old Registration Books: None
Old Poll Books: None
Application Forms:

Number Made Available: 1190

Period of Time They Cover:

About 1955 to date of second photographing

[fol. 811] George #77

Date Current Registration Began: January 1, 1934

	Whites Over 21	Whites Reg'd	%	Negroes Over 21	Negroes Reg'd	%
Jan. 1, 1890	*					
Jan. 1, 1899	*					
Jan. 1, 1954	4,677	2,746	59%	618	12	1.9%
Mar. 24, 1955	4,677	3,141	67%	618	12	1.9%
Jan. 1, 1960	5,276	3,678	70%	580	7	1.2%
Jan. 1, 1962	5,276	3,510	67%	580	10	1.7%

*George County was not formed until after 1899.

Total Votes Cast in First Gubernatorial Primary

1951	3,060	1959	3,685
1955	3,728	1963	

Source and Explanation of Registration Statistics

Race Identification

The current registration books and the current poll books indicate race of all electors.

January 1, 1954

Negroes: 12
Source: Current Registration Books

Explanation: All Negroes registered prior to January 1, 1954 were counted. The total excludes two Negroes, one who died in 1947 or 1948 (Lee S. Ferrill, Basin Precinct) and one who would have been age 109 on January 1, 1954 (Wash Johnson, Bexley Precinct).

White: 2,746
Source: Current Poll Books

Explanation: All whites registered prior to January 1, 1954 were counted. The total includes 610 whites registered [fol. 812] prior to January 1, 1954 whose names were crossed out. The total excludes all whites registered prior to 1954 who were crossed out of the Registration Book prior to the time of setting up current poll book in 1959. The current primary poll books were used rather than the registration books which commenced in 1934 and had not been purged for deaths, transfers, etc.

March 24, 1955

Negroes: 12
Source: Current Registration Book

Explanation: All Negroes registered prior to March 24, 1955 were counted. The total excludes two Negroes, one who died in 1947 or 1948 (Lee S. Ferrill, Basin Precinct) and one who would have been age 109 on January 1, 1954 (Wash Johnson, Bexley Precinct).

White: 3,141
Source: Current Poll Book

Explanation: All whites registered prior to March 24, 1955 were counted. The total includes 766 whites registered prior to March 24, 1955 whose names were crossed out. The total excludes all whites registered prior to 1955 who were crossed out in the registration book prior to time of setting up of current poll book in 1959.

January 1, 1960

Negroes: 7
Source: Current Registration Book

Explanation: All Negroes registered prior to January 1, 1960 were counted. The total excludes five Negroes whom the Government believes died before January 1, 1960 (Lee S. Ferrill, Basin Precinct; Ben Williams, Basin Precinct; Frank Bush, Bexley Precinct; Albert Cowan, Agricola and Tom Fairley, Benndale Precincts), and four other Negroes who would have been 92 years of age or older as of January 1, 1960 (Wash Johnson, Bexley Precinct; Charlie Parker, Merrill Precinct; William Fairley, Benndale Precinct and Butler Williams, Benndale Precinct). The registration books reflect that one Negro registered between March 24, 1955 and January 1, 1960.

Whites: 3,678
Source: Current Poll Book

Explaation: The minimum number of white persons registered was estimated from the total number of votes cast in the first gubernatorial election in August 1959 less

the total number of Negroes registered prior to January 1, 1960.

[fol. 813] June 1, 1962

Negroes: 10
Source: Current Registration Book

Explanation: All Negroes registered prior to June 1, 1962 were counted. The total excludes six Negroes whom the Government believes died before June 1, 1962 (Lee S. Ferrill, Basin Precinct; Ben Williams, Basin Precinct; Frank Bush, Bexley Precinct; Albert Cowan, Agricola Precinct; Tom Fairley, Benndale Precinct and Jim Williams, Basin Precinct) and three Negroes who would have been age 94 or older as of January 1, 1962 (Wash Johnson, Bexley Precinct; Charlie Parker, Merrill Precinct; William Fairley, Benndale Precinct). The registration books reflect that no Negroes were registered between January 1, 1960 and June, 1962.

Whites: 3,510
Source: Current Poll Book

Explanation: The number of white persons registered was obtained by counting the names of white persons registered prior to June 1, 1962. All names crossed out in the books were excluded.

General Information

Name of Present Registrar: Eldred W. Green
Date Present Registrar Took Office: January 1, 1960
Dates Records Were Photographed:

July 28, 1962 and November 27, 1962

Description of Records Photographed:

Current Registration Books for Period:

1934 to date of photographing

Current Poll Books for Period:

1959 to date of photographing

Old Registration Books: None
Old Poll Books: None
Application Forms:

Number Made Available: 367

Period of Time Covered:

May 21, 1960-November 27, 1962

[fol. 814] MASTER'S THESIS

Negro Voting in Mississippi

by

James Franklin Barnes
University of Mississippi

August, 1955

Preface page iii and iv

The date relating to the voting done by Negroes in the several primaries and elections included in this survey was collected through a complete count through the poll books in all the counties having more than 80 Negroes qualified. In Counties having so few Negroes that the Circuit Clerk knew all those who had registered and voted, and in Counties where the Clerk had recently compiled the information for his own benefit, the information was taken from the Clerk in an interview. In the remainder of the Counties the information was taken from a complete review of the poll books in the same manner as in the large counties.

The aid of many Circuit Clerks who assisted in the collection of information is gratefully acknowledged.

[fol. 815]

Table 1

County	Negroes over 21 1950 Census	Qualified 1955	Aug.	Nov. **	Dec. ***	% Negro Pop.	% Voted
Adams	9,338	641	274	296	260	49	70.5
Aicorn	2,225	78	19	3	3	14.4	36
Amite	4,598	3	2	0	0	54.2	
Attala	5,179	34	18	10	3	43.4	25.3
Benton	1,749	35	0	3	0	43.8	
Bolivar	21,805	511	44	29	49	68.5	10.7
Calhoun	1,893	6	1	1	1	23.3	
Carroll	3,953	0	0	0	0	57	
Chickasaw	4,016	0	0	0	0	44.5	
Choctaw	1,412	19	0	0	1	30.2	
Claiborne	4,728	111	3	9	18	74.8	24.4
Clarke	3,849	0	0	0	0	40.7	
Clay	4,922	12	0	1	1	56.9	36.2
Coahoma	19,136	1,070	Less than 600			72.2	33.5
Copiah	7,841	16	0	1	1	53.4	23.2
Covington	2,354	419	97	107	17	32.5	
De Sota	8,013	1	0	0	0	67.2	
Forrest	7,406	16	About 10 vote			28.8	65.4
Franklin	2,294	70	0	few	few	39.4	
George	618	0	0	0	0	12.2	
Greene	758	38	0	0	0	18.3	
Grenada	4,980	39	13	4	7	52.2	39.2
Hancock	1,131	449	76	30	38	17.1	38.9
Harrison	7,858	1,569	259	174	302	16	82.7
Hinds	35,021	4,089*	820	679	NA	45	70.5
Holmes	11,468	45	4	5	4	73.5	9.6
Humphreys	7,712	37	0	0	0	69.7	17.6

* Includes as qualified those on July, 1955. All other counties as of May, 1955.
** Interpretation Test.
*** Abolish Public Schools.

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Table 1
(continued)

County	Negroes over 21 1950 Census	Qualified 1955	Aug.	Nov. **	Dec. ***	% Negro Pop.	% Voted
Issaquena	1,790	0	0	0	0	67.4	
Itawamba	470	42	14	1	1	5.4	
Jackson	3,752	900	68	75	90	21.5	56.2
Jasper	4,313	9	0	0	0	51.4	
Jeff	4,304	0	0	0	0	74.5	
Jeff Davis	3,923	1,038	182	256	191	55.5	
Jones	8,046	872	NA	355	136	26.3	50
Kemper	4,023	20	0	10	NA	59.4	
Lafayette	3,844	105	6	4	NA	35.5	17.4
Lamar	1,118	0	0	0	0	15.9	
Lauderdale	12,965	1,059	131	126	63	36.4	65.3
Lawrence	2,229	268	NA	42	NA	36.7	
Leake	3,835	66	12	10	7	42.4	
Lee	5,531	97	25	17	26	27.9	30.1
Leflore	17,893	297	74	67	45	68.2	34.9
Lincoln	4,507	516	33	41	19	32.9	28.0
Lowndes	9,177	117	21	10	NA	48.6	45.4
Madison	11,586	431	557	37	36	73.6	20.8
Marion	4,103	331	25	19	8	35	25.6
Marshall	8,210	15	7	5	1	70.6	13
Monroe	6,734	18	few	–	–	37.5	28.1
Montgomery	2,978	0*	6	0	0	43	27.8
Neshoba	2,984	8	0	0	0	25.9	17.4
Newton	3,687	52	0	2	NA	34.6	12.8
Noxubee	6,764	0	0	0	0	74.4	
Oktibbeha	5,409	128	26	28	22	47.8	28.9
Panola	8,628	1	0	0	0	55	
Pearl River	2,454	0	0	0	0	21.8	32.5
Perry	1,136	58	0	0	0	24.3	
Pike	7,608	137	53	37	40	44.7	29.6
Pontotoc	1,847	6	0	0	0	19.1	
Prentiss	1,170	18	0	0	0	11.8	16.6

* 26 were listed in Atty. Gen. report of summer 1954—Since then asked to get off 19; or delinquent-7.

[fol. 817]

Table 1
(continued)

County	Negroes over 21 1950 Census	Qualified 1955	Aug.	Nov. **	Dec. ***	% Negro Pop.	% Voted
Quitman	7,844	234	39	8	7	60.7	
Rankin	7,295	33	2	0	0	47.3	
Scott	4,329	15	5	0	1	43.2	13.3
Sharkey	4,533	1	0	0	0	71.3	
Simpson	3,351	61	10	4	NA	33.3	
Smith	1,400	6	0	0	0	20.3	
Stone	746	25	0	6	5	21.8	
Sunflower	18,949	114?	Few	Few	NA	68.1	7.8
Tallahatchie	9,235	0	0	0	0	63.7	8.6
Tate	2,989	0	0	0	0	57.6	
Tippah	1,603	144	15	14	8	19.4	
Tishomingoo	463	17	0	0	0	5.2	
Tunica	9,123	27?	1	0	0	81.8	
Union	1,904	67	8	5	2	17.9	18.2
Walthall	3,017	0	0	0	0	46	
Warren	12,312	1,099 (250	183	114	94	50.7	70.5
Washington	27,823	1,464 vote	237	268	256	66.8	49.2
Wayne	2,857	0 over	0	0	0	36.6	20.2
Webster	1,243	3 60)	0	0	0	23.2	
Wilkinson	4,558	40	1	0	0	69.1	
Winston	4,162	30	12	25	NA	41.8	23.8
Yalobusha	3,142	9	1	1	1	43.9	21.2
Yazoo	11,126	81	10	11	9	61.8	27.3

[fol. 818] [File Endorsement Omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3312

[Title omitted]

ANSWERS TO INTERROGATORIES OF STATE OF MISSISSIPPI; MRS. PAULINE EASLEY, CIRCUIT CLERK AND REGISTRAR OF CLAIBORNE COUNTY; J. W. SMITH, CIRCUIT CLERK AND REGISTRAR OF COAHOMA COUNTY; T. E. WIGGINS, CIRCUIT CLERK AND REGISTRAR OF LOWNDES COUNTY—filed September 3, 1963.

Purpose of Laws 1890, 1954, 1960, 1962

Decrease in Negro Registration 1890—1954

[fol. 819]

ANSWER TO INTERROGATORIES NUMBERS 2(a) AND 4(a) AS TO THE SPECIFIC FACTS ON WHICH THE UNITED STATES BASES THE ASSERTION CONTAINED IN PARAGRAPH 16 OF THE COMPLAINT THAT ONE OF THE CHIEF PURPOSES OF THE MISSISSIPPI CONSTITUTION OF 1890 WAS TO RESTRICT THE NEGRO FRANCHISE AND TO ESTABLISH AND PERPETUATE WHITE POLITICAL SUPREMACY AND RACIAL SEGREGATION IN MISSISSIPPI, AND AS TO THE FULL FACTUAL BASIS FOR THE ASSERTION CONTAINED IN PARAGRAPH 17 OF THE COMPLAINT THAT SECTION 244 OF THE MISSISSIPPI CONSTITUTION OF 1890 WAS DESIGNED TO ACCOMPLISH THIS PURPOSE.

The factual basis for the allegation that the purpose of the Mississippi Constitution of 1890, and specifically Section 244 of that Constitution, was to restrict the Negro franchise and to establish and perpetuate white political supremacy in Mississippi is as follows:

A. Qualifications for Voters under the Constitution of 1869 and under the Constitution of 1890

Under the Mississippi Constitution of 1869, which remained in effect until 1890, the qualifications for a voter were that he be [1]

(1) A male citizen of the United States;
(2) Twenty-one years of age or older;
(3) A resident of the State six months and of the county (one month);
(4) Registered to vote;
(5) Not disqualified by reason of insanity, idiocy, or conviction of certain crimes.

On February 5, 1890, the Mississippi Legislature passed a statute calling for the convening of a constitutional convention to revise and amend the present state constitution. [fol. 820] or to enact a new one.[2] On August 18, 1890, the

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[1] P90-1. Mississippi Constitution of 1869. Article VII, Section 2.

[2] P90-3. Laws of 1890, Chapter 35.

convention opened [3] and by November 1, 1890 a new constitution was adopted.[4]

New qualifications for voters required that each elector [5]

(1) Be a male citizen of the United States;
(2) Be twenty-one years of age or over;
(3) Be a resident of the State two years and of the election district or municipality one year;
(4) Be registered to vote;
(5) Be not disqualified by reason of insanity, idiocy, or conviction of certain crimes;
(6) Be able to read any section of the State Constitution, or be able to understand it when read to him, or to give a reasonable interpretation of it.
(7) Have paid all taxes by February of the year in which he desires to vote and produce evidence of payment. This includes payment of an annual poll tax of two dollars.

[fol. 821] A complete re-registration of all voters in the state in accordance with the new qualifications was required before the first election following January 1, 1892.[6]

This new constitution was not submitted to the electorate for ratification.[7]

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[3] P90-4. *Journal of the Proceedings of the Constitutional Convention of the State of Mississippi.* (Jackson, Mississippi: E. L. Martin, 1890), p. 3.

[4] P90-5. *Journal of the Proceedings of the Constitutional Convention of the State of Mississippi.* (Jackson, Mississippi: E. L. Martin, 1890), p. 637-638.

[5] P90-2. Mississippi Constitution of 1890. Article XII, Sections 241, 243, and 244.

[6] P90-2. Mississippi Constitution of 1890. Article XII, Section 244.

[7] P90-6. *Journal of the Proceedings of the Constitutional Convention of the State of Mississippi.* (Jackson, Mississippi: E. L. Martin, 1890), p. 628. The concluding sentence in the *Journal* for November 1, 1890, reads as follows: "This Constitution, adopted by the people of Mississippi in Convention assembled, shall be in force and effect from and after this, the first day of November, A.D., 1890."

B. Population and Registration Statistics for the Period

In 1870 Negroes constituted 53.7% of the population of Mississippi. This percentage increased to 57.5% in 1880 and to 57.6% in 1890.[8] In 1890 55.5 of the persons eligible to vote in Mississippi were Negroes.[9]

C. A Purpose to Discriminate as Shown by the History of the Convention of 1890

1. Documents Upon Which the Government Relies to Show Purpose

For the period immediately preceding the Constitutional Convention newspaper articles quoting persons who subsequently became delegates provide the only available background information on developments leading up to the adoption of the Constitution of 1890. These articles are [fol. 822] admissible because these persons were not only delegates but also draftsmen of the constitution.

The proceedings of the Convention itself were recorded in the official *Journal of the Proceedings of the Constitutional Convention of the State of Mississippi.* This journal is a condensed record of daily minutes, resolutions, proposed amendments, voting tabulations and several committee reports. It does not contain speeches made by delegates or debates on the floor of the Convention or in committee meetings.

A resolution submitted August 14 to the Convention directed that copies of the *Daily Clarion-Ledger* be furnished as reports to all delegates.[10] However, because a large number of the delegates were already subscribing to

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[8] C-8. *Negroes in the United States.* Department of Commerce and Labor, Bureau of the Census. (Washington, D.C.: Government Printing Office, 1904), p. 109.

[9] C-2. *Biennial Report of the Secretary of State to the Legislature of Mississippi for the years 1896 and 1897.* (Jackson, Mississippi: The Clarion-Ledger Print., 1897), p. 67.

[10] P90-7. *Journal of the Proceedings of the Constitutional Convention of the State of Mississippi.* (Jackson, Mississippi: E. L. Martin, 1890), p. 23.

the *Daily Clarion-Ledger* and using it as their unofficial Convention report, this resolution was tabled.[11]

For the period during which the Convention met, August 12 through November 1, 1890, the *Clarion-Ledger*, a Jackson Mississippi, newspaper did publish a daily coverage of the Convention which included the complete texts of some speeches and significant quotations from other speeches made by delegates to the Convention.[12]

The accuracy of the *Clarion-Ledger* as the unofficial journal of the Convention is attested to by the fact that the state [fol. 823] printer, R. H. Henry Company, Jackson, which printed the *Daily Clarion-Ledger*, also printed for all delegates, by order of a Convention resolution on August 18, 1890, copies of the rules, all amendments, articles and resolutions submitted to the Convention.[13]

Post-Convention documents are limited to six sources: *Proceedings of a Reunion of the Surviving Members of the Constitutional Convention of 1890*, which reunion was held in 1910; *Proceedings of a Reunion of the Surviving Members of the Constitutional Convention of 1890*, which reunion was held in 1927; the *Publications of the Mississippi Historical Society*, a publication sponsored by the State of Mississippi; *Mississippi Constitution of 1890, An Address Delivered to the Mississippi State Bar Association* in 1923 by Judge R. H. Thompson; the *Clarion-Ledger*, described above; and *Mississippi Constitutions*, a text by George H. Ethridge.

The first three sources in the preceding paragraph are official publications as their publication and printing was sponsored by the State of Mississippi.

The address to the Mississippi State Bar Association was made by a former delegate to the Convention; the *Clarion-Ledger* article appeared immediately after the Constitution

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[11] P90-13. The *Clarion-Ledger*. Jackson, Mississippi. August 21, 1890, p. 3.

[12] P90-14. The *Clarion-Ledger*. Jackson, Mississippi. July 31, 1890, p. 4, col. 3.

[13] P90-8. *Journal of the Proceedings of the Constitutional Convention of the State of Mississippi.* (Jackson, Mississippi: E. L. Martin, 1890), p. 59.

had been adopted; and *Mississippi Constitutions* was written by an Associate Judge of the Supreme Court of the State of Mississippi.

[fol. 824] See the following cases for authority for the admissibility of these documents: *Hall* v. *Helena Parish School Board*, 197 F. Supp. 649 (E.D. La., 1961), aff'd 368 U.S. 515 (1961); *Davis* v. *Schnell*, 81 F. Supp. 872 (S.D. Ala., 1949), aff'd. 336 U.S. 933; *Dallas County* v. *Commercial Union Assurance Co.*, 286 F. 2d 388 (5th Cir., 1961; Wisdom, J.); *Morris* v. *Lessees*, 7 Pet. 553, 558 (1833; Story, J.).

2. The Background and Setting in Which The Constitutional Convention was Called

a. White Control of State Political Positions Prior to and Including 1890

Prior to and during the Constitutional Convention practically all important Mississippi federal, state, county, and local governmental positions were occupied by white citizens.

Other than in the State Legislature, Mississippi Negroes occupied fewer than ten positions as United States Congressmen or in Mississippi state government during the period from 1875 to 1890.[14]

In 1890 there were no Negroes among the 40 members of the Mississippi State Senate and four Negroes among the 120 members of the State House of Representatives.[15]

[fol. 825] b. Statements of the White Political Leaders Regarding the Convention

Judge Chrisman of Lincoln County, in a speech to the Convention reported in the *Clarion-Ledger*, September 11, 1890, commented on the methods by which white men had

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[14] C-5. *Biennial Report of the Secretary of State to the Legislature for the Years 1898 and 1899.* pp. 174-190.

[15] C-1. *Biennial Report of the Secretary of State to the Legislature of Mississippi for the Years 1888 and 1889.* (Jackson, Mississippi: R. H. Henry, State Printer, 1890), pp. 5-8.

regained control of political positions in Mississippi after 1875:[16]

> Sir, it is no secret that there has not been a full vote and a fair count in Mississippi since 1875—that we have been preserving the ascendancy of the white people by revolutionary methods. In plain words, we have been stuffing ballot-boxes, committing perjury and here and there in the State carrying the elections by fraud and violence until the whole machinery for elections was about to rot down.

According to the *Clarion-Ledger*, October 24, 1889, J. Z. George, United States Senator from Mississippi, addressed a gathering of citizens at the hall of the Mississippi House of Representatives. He said:[17]

> Our First Duty, Therefore,
> when we meet in convention, is to devise such measures, consistent with the Constitution of the United States, as will enable us to maintain a home government, under the control of the white people of the state.

As early as 1876 there was growing pressure to revise the Constitution of Mississippi by a constitutional convention. Judge R. H. Thompson, a delegate to the 1890 Convention, later summed up this movement in an address to the Missis- [fol. 826] sippi State Bar Association:[18]

> Several ineffectual efforts were made between 1876 and 1890 to have a Constitutional Convention called; these efforts failed because a majority of the white people seemed firmly convinced that a convention would be powerless to so far disfranchise the Negroes as to give

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[16] P90-15. The *Clarion-Ledger*. September 11, 1890, p. 1, col. 1.

[17] P90-16. The *Clarion-Ledger*. October 24, 1889, p. 1, col. 3.

[18] P90-19. Thompson, R. H. *Mississippi Constitution of 1890—An Address Delivered to the Mississippi State Bar* Association. (Biloxi, Mississippi: 1923), p. 3.

> the white people a majority of the electors of the state . . .

Seventeen days after the statute calling for the Constitutional Convention was passed, Judge S. S. Calhoon, later elected President of the Convention, wrote an article for the *Times Democrat*. The *Clarion-Ledger*, March 6, 1890, reprinted this article.[19]

> That the Negro fought for the Union is true, but he fought for his freedom. He has been awarded what he fought to obtain, and with his pension, and there was no warrant in his expecting to share in the governing power, nor was there any such promise or previous design. To so share will jeopardize his own future and that of the whites.
>
> If he brings his own reason to bear on his condition he must see that his future is better assured without the ballot.

c. Election of Delegates to the Constitutional Convention

The delegates to the Convention were to be elected by the people: 120 according to the apportionment for the State House of Representatives, and 14 from the State at large.[20] [fol. 827] The election was held on July 29, 1890.[21] Although over 57% of the population of Mississippi was Negro,[22] only one of the 134 delegates elected was a Negro.[23]

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[19] P90-17. The *Clarion-Ledger*. March 6, 1890, p. 2, col. 1.

[20] P90-3. Laws of 1890, Chapter 35.

[21] P90-38. *Proceedings of a Reunion of the Surviving Members of the Constitutional Convention of 1890.* (1927). (Jackson, Mississippi: Premier Printing Co., 1928), p. 48.

[22] C-8. *Negroes in the United States.* Department of Commerce and Labor, Bureau of the Census. (Washington, D.C.: Government Printing Office, 1904), p. 109.

[23] P90-39. *Proceedings of a Reunion of the Surviving Members of the Constitutional Convention of 1890,* (1927). (Jackson, Mississippi: Premier Printing Co., 1928), p. 53.

3. The Proceedings of the Constitutional Convention of 1890

a. Opening Address of the President of the Convention

The Constitutional Convention of 1890 was opened with an address by the President of the Convention, S. S. Calhoon. He told the delegates:[24]

> . . . [W]hen any of the five distinct races encounter each other in the matter of government . . . from the instinct implanted in its nature, it desires to be in the ascendancy.
>
> This is so true, so general, such a historical fact that it may be said to be a law of God. This shows the difficulty of one of the problems you have to encounter.
>
> This ballot system must be so arranged as to effect one object, permit me to say—for we find the two races now together, the rule of one of which has always meant [fol. 828] economic and moral ruin; we find another race whose rule has always meant prosperity and happiness to all races.
>
> What does the instinct of self-protection require us to do? We have been twenty-five long years endeavoring to have strictly homologous political relations between those races. We have failed.
>
> . . . . . .
>
> That is the great problem for which we are called together; that is the great question for you to solve, and the outside world is looking anxiously and our sister States of the South are looking at the solution we arrive at in reference to that question.

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[24] P90-9. *Journal of the Proceedings of the Constitutional Convention of the State of Mississippi.* (Jackson, Mississippi: E. L. Martin, 1890), p. 10-11.

b. Committee Resolutions

The Convention established several committees to write the new constitution. The thirty-four member Franchise Committee made the following resolution on August 15;[25]

> Resolved that it is the duty of this Com. to perform its work in such a manner as to secure permanent *white*[26] intelligent rule in all the departments of the state government and without due violence to the true principles of our republican system of government. . . .

[fol. 829] On the 44th day of the Convention, the Preamble Committee submitted the following resolution:[27]

> Whereas, There are in the State of Mississippi, and some other of the States of the United States, in approximately equal numbers, two distinct races or types of mankind, the white and the negro; and
>
> Whereas, These two races, though friendly and homogeneous for all business and industrial purposes, are widely separated by race instincts and prejudices in all political and social matters; and

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[25] P90-47. Quoted by J. S. McNeilly in "History of the Measures Submitted to the Committee on Elective Franchise, Apportionment, and Elections in the Constitutional Convention of 1890," *Publications of the Mississippi Historical Society.* (Oxford, Mississippi: Printed for the Society, 1902), p. 133.

[26] P90-45. In the original handwritten copy of the resolution the word "white" appears and is crossed out; the resolution which was adopted by the Franchise Committee does not contain the word "white". "Minutes of the Committee on Elective Franchise, Apportionment, and Election," from the papers of Charles K. Regan, Secretary of the committee, in the Mississippi Department of Archives and History, Jackson, Mississippi.

[27] P90-10. *Journal of the Proceedings of the Constitutional Convention of the State of Mississippi.* (Jackson, Mississippi: E. L. Martin, 1890), pp. 303-304.

Whereas, We are without any well founded hope of a change, in respect to the political relations of the two races, but, in our opinion, they will ever be divided in all political contests in the main, on race lines, rather than on economic and other questions of common interest to them; and

Whereas, With such a condition, the one race or the other must have charge and control the governments of such States, and to do so there will be ever recurring conflicts of greater or less magnitude between them; and

Whereas, A government thus maintained, existing and resulting upon such a condition, Must of necessity be without permanence, efficiency or stability; and

Whereas, Such conditions of insecurity is not only a great political or social evil, but also greatly impedes all industrial development; and inasmuch as the white people only are capable of conducting and maintaining the governments of such States, giving security and [fol. 830] protection to the whole people and property thereof, the negro race, even if its people were educated, being wholly unequal to such great responsibility, if they should come into control of such governments; therefore be it

Resolved, By the people of the State of Mississippi, in this, its Constitutional Convention assembled, that it is our deliberate judgment and opinion that the true and only efficient remedy for the great and important difficulties arising out of the conditions set forth in the foregoing preamble, lies in the repeat of the XV Amendment of the Constitution of the United States, whereby such restrictions and limitations may be put upon negro suffrage, by the several States, as may be necessary and proper for the maintenance of good and stable governments therein;

Resolved, That we request that the Congress of the United States cause to be submitted to the several States, a proposition to repeal said XV. Amendment

of the Constitution, and that we will cheerfully accept as a condition to such repeal such reduction in representation in the House of Representatives of Congress from Mississippi as may be reasonable and just in view of the dimuniton of the number of voters in the State consequent upon such repeal of said XV. Amendment. Resolved, That the Senators and Representatives in Congress from Mississippi, are requested to bring these resolutions and preamble to the attention of Congress.

c. Statements by Delegates

The *Clarion-Ledger* of September 18, 1890, reported a speech to the Convention by W. S. Eskridge, of Tallahatchie County, in which he said: [28]

> We stand confronted, sir, with 70,000 male adult [fol. 831] negroes in this State in excess of the white vote, a majority which if organized and handled by adroit and courageous leaders, might at the ballot box, at any election, by taking the white votes unawares, overthrow the present civil government. It is to prevent such a danger, and to guard against such a calamity that we are assembled here this day. How is this end to be accomplished? Only, in my judgment, by such an adjustment of the basis of suffrage as will secure to the white race a fixed and permanent majority. The white people of the State want to feel and know that they are protected not only against the probability but the possibility of negro rule and negro domination. They demand this at our hands, it is for this they have sent us here, and nothing short of this will satisfy them, or excuse us. The remedy is in our hands, we can if we will afford a safe, certain and permanent white supremacy in our state.

According to the *Clarion-Ledger* of September 18, 1890, Mr. Witherspoon, floater delegate representing Kemper,

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[28] P90-18. The *Clarion-Ledger*. Jackson, Mississippi. September 18, 1890, p. 1, col. 3.

Lauderdale and Clarke Counties, stated on the floor of the Convention: [29]

> There is no question that, in this state, the powers of government are politically and constitutionally lodged in the Negro race, and that the paramount object of this Convention is to transfer it to and vest it in the white race, and this could be accomplished in either of four ways: To abolish [the] 15th Amendment, or lodge political power in certain individuals, or by an educational or property qualification, or to lodge political power in certain localities. . . .

Mr. Melchoir of Bolivar County stated in his resolution a recognition of purpose for the convention: [30]

> [fol. 832] Whereas the manifest intention of this convention to secure to the State of Mississippi 'white supremacy' . . . (*Clarion-Ledger,* September 25, 1890)

The following eight statements were reported in the *Clarion-Ledger* by its special correspondent to the Convention, J. L. Power.

Mr. McGehee of Franklin County stated: [31]

> I will agree that this is a government of the people, by the people, and for the people; but what people? When this declaration was made by our forefathers it was for the Anglo Saxon people. That is what we are here for today to secure the supremacy of the white race. (September 18, 1890)

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[29] P90-19. The *Clarion-Ledger.* Jackson, Mississippi. September 18, 1890, p. 3, col. 4.

[30] P90-46. "Printed Proposition Number 261, for the Constitutional Convention of 1890," from the papers of Charles K. Regan, in the Mississippi Department of Archives and History, Jackson, Mississippi.

[31] P90-20. The *Clarion-Ledger.* Jackson, Mississippi. September 18, 1890, p. 3, col. 3.

Mr. Boyd of Tippah County stated:[32]

> The right of suffrage is inherent in the Caucasian race and cannot be taken away. (September 11, 1890)

Mr. Yerger of Washington County stated:[33]

> There may be some in his section who will not approve it; but all we ask is a fair show for the Anglo Saxon and he will come to the front whenever he has opportunity. (September 11, 1890)

Mr. Bell of Kemper County stated:[34]

> We are embarked in the same ship of white supremacy, [fol. 833] and it is freighted with all our hopes. (September 11, 1890)

Mr. Miller of Leake County stated:[35]

> [H]ence I appeal to my brethren and representatives of the white counties to stand by the report of the [Franchise] committee, and let us have the questionable, and shameful methods of controlling the ballot box stopped, these methods are demoralizing to our young men and there is a general outcry that they must cease. I believe the plan as reported by the Committee will effect this great reform. The Committee say they believe it will do so, and still leave the State under the control of the whites. (September 18, 1890)

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[32] P90-21. The *Clarion-Ledger*. Jackson, *Mississippi*. September 11, 1890, p. 5, col. 3.

[33] P90-22. The *Clarion-Ledger*. Jackson, Mississippi. September 11, 1890, p. 5, col. 4.

[34] P90-23. The *Clarion-Ledger*. Jackson, Mississippi. September 11, 1890, p. 5, col. 4.

[35] P90-24. The *Clarion-Ledger*. *Jackson, Mississippi*. September 18, 1890, p. 2, col. 4.

Judge Calhoon, President of the Convention, stated: [36]

> We want them [the Negroes] here, but their own good and our own demands that we shall devise some means by which they shall be practically excluded from government control. (September 18, 1890)

Mr. E. Mayes from Lafayette County, who was representing the state at large, in referring to the report of the Franchise Committee, stated: [37]

> I said, that, if the objective were to pass a Constitution which would secure the control of the State to the [fol. 834] Democratic party, that also was impossible; but, that if the objective were to create a Constitution which would secure the control of the State virtually to the white people in the State that could be done, and Sir, I believe that this report will do it. (September 18, 1890)

Mr. Boothe of Panola County, stated: [38]

> But suppose the hand of the white man in the black counties is lifted, and the negro is guaranteed a free ballot and a fair count and avails himself of it, and there is no limitation upon suffrage, what would be the result? The gentleman from Tippah might come here as a member of the Senate or House from his county, but he would be confronted by a negro President in the other end of this Capital and be rapped down by a negro Speaker in this hall. (September 18, 1890)

d. Discussion of a Constitutional Interpretation Test

An interpretation test was proposed in the Convention. This would require a voter to be able to read, or to under-

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[36] P90-25. The *Clarion-Ledger*. Jackson, Mississippi. September 18, 1890, p.t 3, col. 2.

[37] P90-26. The *Clarion-Ledger*. Jackson, Mississippi. September 18, 1890, p. 1, col. 3.

[38] P90-27. The *Clarion-Ledger*. Jackson, Mississippi. September 18, 1890, p. 2, col. 2.

stand, or to give a reasonable interpretation of any section of the Mississippi Constitution.

According to the *Clarion-Ledger,* September 18, 1890, Mr. Eskridge opposed this section in the Convention:[39]

> On the basis of the census of 1880, there is eleven per cent illiteracy amongst the white race, whilst with the blacks the per cent is seventy-six. This scheme [the reading aspect of the test] would therefore disfranchise [fol. 835] only eleven whites in 100, whilst it would reduce the black vote 76 in 100. The advantage therefore in favor of the whites would be very considerable. My objection to this qualification [the understanding clause] I will state very briefly. I fear sir, it will lead to trickery and fraud. The people of the State are looking to us and expecting at our hands to settle the suffrage question on such a basis as will establish beyond doubt white supremacy and place the State above trickery and fraud at the ballot box. This is in our power to do if we have but the courage and manhood to do it.
>
> Adopt this qualification and it places in the hands of the officer who is to apply the test the power to defraud and to disfranchise.

On September 11, 1890 the *Clarion-Ledger* reported that Judge Chrisman from Lincoln County stated:[40]

> . . . I stop to say that the proposition that in 1895 a man shall be able to read the Constitution, or be able to understand any clause of it when read to him, stamps the whole scheme of the Committee with disfavor. It don't look honest, straight-forward or manly. It looks like a farce to make a registration officer decide whether a voter rightly interprets a clause of the Constitution. If the register [sic] decides that the voter rightly interprets the clause, he is a qualified voter. If he does not

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[39] P90-28. The *Clarion-Ledger.* Jackson, Mississippi. September 18, 1890, p. 1, col. 4.

[40] P90-29. The *Clarion-Ledger.* Jackson, Mississippi. September 11, 1890, p. 1, col. 1.

> understand it he cannot register. This section, the meaning of which has been the subject of learned and dissertation [sic] by the Storys, the Marshalls, and the Sharkeys on the bench, are to be submitted to the voter [fol. 836] who cannot read for construction, and upon the decision of a registration officer as to whether he correctly construes its meaning depends the right of the citizen to vote.
>
> It looks as if it was intended that if a register [sic] wanted the man to vote he would read him some such clause as Slavery except as a punishment for crime should be forever prohibited. 'Do you understand this?' 'Oh yes.' But if he did not want him to vote he would read him the interstate clause or the section forbidding the Legislature to pass *ex post facto* laws and demand a construction.

In a letter to the *Natchez Democrat,* republished in the *Clarion-Ledger* of October 9, 1890, the Honorable G. T. McGehee, delegate from Wilkinson County, was willing to compromise:[41]

> Not willing to rest under any such imputation, I write to disclaim the paternity of anything so vague in its application and uncertain in its effect. I was a member of the subcommittee who drew up the Franchise clause throughout. When, however, I found that the white counties would agree to nothing more stringent, I with the other black county men took it on the principle that 'half a loaf is better than no bread.'

A *Clarion-Ledger* editorial for October 9, 1890, stated:[42]

> Mr. McLean of Grenada, was right when in condemning this section he said, that 'the people sent the delegates to the Convention to secure white supremacy, not by a trick or artifice, not by fraud. strategem, or subterfuge,

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[41] P90-30 The *Clarion-Ledger.* Jackson, Mississippi. October 9, 1890, p. 2, col. 2.

[42] P90-31. The *Clarion-Ledger.* Jackson, Mississippi. October 9, 1890, p. 4, col. 2.

> but by brave, open, honest and honorable methods; that this section was a fraud upon its face and the trial of the [fol. 837] serpent was on it all; that the mephitic vapour which arises from the section actually stinks in the nostrils of an honest man and makes one feel like stuffing the registration books.'

Despite the opposition to it, the interpretation test was adopted.[43] The section of the Constitution proscribing the interpretation test was reaffirmed by the Convention in late October when a motion was made to reconsider it.[44] The *Clarion-Ledger* of October 30, 1890 summarized the various positions of the supporters of the interpretation test:[45]

> Several reasons may be given why the Convention refused to rescind the 'Understanding Clause' of section 5; Stubbornness on the part of a few delegates; the belief that the clause would work well on the part of others; fear by some that if the 'Understanding Clause' were rescinded that the whole of Section 5 would be repealed; the belief by many that it would exclude from the polls all negroes who could not read; and still others hope that no white Democrat will be denied a vote under it.

The *Clarion-Ledger* of December 18, 1890 reprinted an interview with Governor John M. Stone of Mississippi by a Memphis *Appeal-Avalanche* reporter in December 1889; Governor Stone said in part:[46]

> There is some dissatisfaction about that understanding clause in Section 5, but not a great deal. The news-

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[43] P90-11. *Journal of the Proceedings of the Constitutional Convention of the State of Mississippi.* (Jackson, Mississippi: E. L. Martin, 1890), p. 269.

[44] P90-12. *Journal of the Proceedings of the Constitutional Convention of the State of Mississippi.* (Jackson, Mississippi: E. L. Martin, 1890), pp. 542-545.

[45] P90-32. The *Clarion-Ledger*. Jackson, Mississippi. October 30, 1890, p. 4, col. 2.

[46] P90-33. The *Clarion-Ledger*. Jackson, Mississippi. December 18, 1890, p. 5, col. 1.

[fol. 838] papers made a great deal of fuss about it; still I don't think it will do any great harm; of course much depends upon the way in which it is administered.

D. A Purpose to Discriminate as Shown by Post-Convention Statements

1. Subsequent Comments by Delegates

In 1910 a reunion of the survivors of the Constitutional Convention was held at the State Capitol Building in Jackson.[47] The *Proceedings of the Reunion of the Surviving Members of the Constitutional Convention of 1890*, the official journal of the meeting, contained a speech by Mayre Dabney, delegate from Warren County, who restated the purpose of the Convention:[48]

> It was understood in advance of the call for that Convention, that the primary purpose of it was to adopt some provision in our organic law which would secure to the State a good and stable government, freed from the incubus of Republican or negro rule from which we had suffered since the adoption of the 1869 constitution. . . . All understood and desired that some scheme should be evolved which would effectively remove from the sphere of politics in the State the ignorant and unpatriotic negro. This was recognized as a necessity in the establishment of a State government under which we could live and prosper.

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[47] P90-35. The *Proceedings of the Reunion of the Surviving Members of the Constitutional Convention of 1890.* (1910)

[48] P90-36. The *Proceedings of the Reunion of the Surviving Members of the Constitutional Convention of 1890.* (1910)

[fol. 839] Referring to one of the clauses most effective in the disfranchisement of the Negro, Dabney stated: [49]

> By Section 243 of the Constitution it is provided that no criminal proceedings shall be allowed to enforce the collection of the poll tax . . . . This provision, of course, is in furtherance of the franchise plan of the constitution and is intended to keep negroes from being forced to pay poll taxes, thus making voters of them. There have occasionally been suggestions by persons who have not lived in the 'black counties' that this provision should be repealed in order to raise revenue by collecting the poll tax from negroes. Such a course would, I think, be suicidal and destroy the whole work for which the Convention of 1890 was called and would at once jeopardize the excellent State government now completely in the control of the white people of the state.

In 1927 on the thirty-seventh anniversary of the adoption of the Constitution the surviving members of the Convention met at Jackson.[50]

According to the minutes of this reunion: "The delegates were called to order by Edgar S. Wilson. He stated on that day, thirty-seven years ago, the Constitutional Convention of 1890 enacted an organic law which gave Mississippians Anglo-Saxon government, and adjourned." [51]

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[49] P90-37. The *Proceedings of the Reunion of the Surviving Members of the Constitutional Convention of 1890.* (1910)

[50] P90-37. The *Proceedings of the Reunion of the Surviving Members of the Constitutional Convention of 1890.* (1927), p. 5.

[51] P90-41. The *Proceedings of a Reunion of the Surviving Members of the Constitutional Convention of 1890.* (1927), p. 5.

The publication of this reunion also contained the following three speeches by former delegates:

[fol. 840] Judge R. H. Thompson, Chairman of the surviving delegates, discussed the achievement of their convention:[52]

> It was no easy task for the convention to which we were delegates to enact a state constitution practically eliminating from the electors of the State at least eight-tenths of its colored people, citizens of the United States, in the face of the fifteenth amendment to the constitution of the United States, providing that 'the right of a citizen of the United States to vote shall not be denied or abridged on account of race, color, or previous condition of servitude.
>
> The fifteenth amendment to the Federal Constitution was not violated by our State Constitution in the enactment of which we only circumvented by Anglo-Saxon ingenuity. There is not a word in the constitution of 1890 which discriminated against the colored people; race characteristics alone can be said to have been causes of disfranchisement.

N. C. Hathorn from Covington County praised the delegates as:[53]

> Men whose mighty intellect always yielded to the thought to do something worthwhile for the democracy and white supremacy of Mississippi, without fraud, intimidation, or bloodshed. . . . They were men of far-seeing vision, with an eye single to the progress and development of Mississippi, through white supremacy.

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[52] P90-42. *The Proceedings of a Reunion of the Surviving Members of the Constitutional Convention of 1890.* (1927), p. 11.

[53] P90-43. *The Proceedings of a Reunion of the Surviving Members of the Constitutional Convention of 1890.* (1927), p. 17.

One of the delegates from Grenada County, William C. McLean, observed that: [54]

> [fol. 841] [T]he burning, all-absorbing question before the convention was, how to make the State of Mississippi safe politically, for the white people. . . . With this provision [Fifteenth Amendment] in the Federal Constitution the gravity of the situation can well be imagined, when the effort was made to practically disfranchise the negro race. The members of that committee for three full weeks were engaged in debating this momentous issue.
>
> . . . out of the mill was ground the franchise article in our present constitution, which will ever protect us from an irresponsible class.
>
> It was perfectly well understood in that convention that our civilization depended upon the supremacy of the white race in Mississippi. . . . The supreme question before that convention was how to meet these conditions, and has been well said, while we could not defeat the right of the colored man to vote on account of 'race, color, or previous condition,' we belted the whole circle of expedients in legislating against his habits and weaknesses, and, without infringing the provisions of the Constitution of the United States, we provided for perpetual white supremacy in the State of Mississippi. . . .

The purpose of the Constitutional Convention of 1890 was later discussed by key delegates. Judge Thompson, from Lincoln and Jefferson Counties, recalled in an address to the Mississippi State Bar Association: [55]

> There is scarcely a conceivable scheme having the least tendency to eliminate the Negro vote that was not duly

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[54] P-90-44. *The Proceedings of a Reunion of the Surviving Members of the Constitutional Convention of 1890.* (1927), pp. 28-30.

[55] P90-50. R. H. Thompson. *Mississippi Constitution of 1890—An Address Delivered to the Mississippi State Bar Association.* (Biloxi, Mississippi: 1923), pp. 16-17.

> considered by the Committee on franchise and as well [fol. 842] by all the delegates to the convention. It is regrettable that all the suggestions on the subject considered by the Convention were not recorded; had they been preserved the record would be a monument to the resourcefulness of the human mind.

Judge Thompson concluded that some sections of the Constiution had suffered from the delegates' preoccupation with the suffrage question. He also said: [56]

> It [Constitution of 1890] grants too much power to the Chief Executive, caused in part no doubt by confidence in the ability and integrity of the great and good man, John M. Stone, then Governor of the State, and in part by an apprehension of inability to so diminish the negro vote as to absolutely secure the election of Democratic legislatures; coupled with confidence in the efficiency of the electoral scheme devised for the election of Democratic governors.

He also commented on the popular reaction to the Convention: [57]

> From the time of the approval of the statute providing for the Convention until its work was practically accomplished, the newspapers of the state were burdened with letters from all sorts of people, making suggestions as to ways and means to defeat the Negro vote . . .
>
> The suggestions unmistakably showed, however, that the people of the state were thoroughly awake to the necessity of relief from the then existing conditions.

[fol. 843] In an article written for the *Publication of the Mississippi Historical Society* in 1902 J. S. McNeilly, a

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[56] P90-51. R. H. Thompson. *Mississippi Constitution of 1890—Address Delivered to the Mississippi State Bar Association.* (Biloxi, Mississippi: 1923), p. 32.

[57] P90-52. R. H. Thompson. *Mississippi Constitution of 1890—An Address Delivered to the Mississippi State Bar Association.* (Biloxi, Mississippi: 1923), p. 10.

former delegate and member of the Franchise Committee of the Constitutional Convention said: [58]

> The first thought of the men who directed the overthrow of carpet-bag and negro rule in 1875 was a Constitutional Convention, to devise an organic law that would guard the state against any possible recurrence of that state of confusion and calamity. (p. 129)
>
> Symptoms of the diseased political condition grew so acute that the demand for suffrage restriction to effect an electorate under which there could be white supremacy through honest elections became quite imperative. (p. 130)
>
> . . . This was of the first importance—that devices of such grave import and novel character be placed in the organic law of the state by a practically united and common assent. It was with a full realization of this primal duty in the construction of a plan that the (franchise) committee entered upon the long and arduous labor. The insistence of the black county delegates for a drastic restriction of suffrage, and the tenacity of white counties against radical infringement upon inherited privileges and white manhood, were met to measure strength on patriotic grounds. The inspirations of a common peril commanded the two forces to fuse their antagonisms. (pp. 132-133)
>
> . . . The first step in its (the suffrage problem) solution was legislative apportionment creating a majority of white constituencies—the legal basis and bulwark of the design of white supremacy in a State with an overwhelming and a growing negro majority. That achieve- [fol. 844] ment would guarantee the law-making branch

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[58] P90-48. J. S. McNeilly, "History of the Measures Submitted to the Committee on Elective Franchise, Apportionment, and Elections in the Constitutional Convention of 1890." *Publications of the Mississippi Historical Society.* (Oxford, Mississippi: Printed for the Society, 1902), pp. 129-140.

of government, and place the election of United States Senators above legal or partisan impeachment. (p. 133)

* * * * * * *

. . . The end was obtained by increasing the Legislature's representative branch thirteen members, with allotment of the increase to the white counties. The majority thus effected was added to by carving several legislative districts out of white sections of black counties. (p. 134)

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. . . Having provided for complete and lawful security of the legislature department and incidentally of the election of United States Senators, as the basis of white supremacy, the value and advantages of the representative apportionment were then extended to the other two branches of the state government—the executive and the judiciary. This was accomplished by the adoption, in the (franchise) committee, of the novel 'electoral plan' . . . contained in Section 140 of the Constitution. . . .

The design of the legislative apportionment, with its electoral supplement, was to erect an impregnable barrier to any possible organization of the negro majority, by extraneous force or by internal faction, for political dominance. (p. 135)

The integrity of the State government being effected through the apportionment and the electoral plan, the committee had on its hands the question of limiting the suffrage privilege. For effect upon the county governments this was to the black counties the most pressing consideration of the whole problem. The delegates from those counties generally favored an alternative educational—a reading and writing—or a property qualification. And such a provision was adopted in the commit- [fol. 845] tee, but voluntarily rescinded on account of the extreme opposition of the minority membership. In lieu of it the 'understanding' clause was adopted . . . Section 244 of the Constitution. The suffrage was

further restricted by the requirement of an unusually long local residence.

. . . What has proved the most effective instrumentality of negro disfranchisement is the two dollar optional poll tax prerequisite, which persons otherwise competent as electors may elect to pay or not according to their desire to qualify for exercise of the voting privilege. These provisions were supplemented by the further one of making registration to close four months before an election. . . . (p. 136)

These several suffrage requirements combined were deemed sufficient for the end in view, as they have so proved in even the blackest parts of the State. They have, as they were intended, reduced the negro majorities to a negligible political quantity. (p. 137)

Concisely and correctly summed up, of the two ills Mississippi chose the lesser. She has exchanged an organic malady for a functional disorder. The Convention substituted a desiccated for a diseased electorate. The ensuing ills of the present state are within the check and correction of the white citizens. (p. 138)

2. Subsequent Comments by Historians and Newspapers

Subsequent commentaries were explicit about the racial purpose and effect of the interpretation test. In an editorial entitled "An Admitted Fact" the Jackson newspaper which served as the unofficial journal for the Convention stated, in reference to a speech of Senator Ingalls in the United States Senate:[59]

[fol. 846] The *Clarion-Ledger* regrets that the exact language of Senator Ingalls and quotations are not published. If he undertook to prove by editorials from this paper that the Constitution [convention] was called to restrict suffrage—negro suffrage, if you please—his efforts were vain and labor useless for that was very generally admitted.

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[59] P90-34. The *Clarion-Ledger*. Jackson, Mississippi. December 25, 1890, p. 4, col. 4.

> All the plans published before the assembling of the Convention; all those offered during its sitting, and ninety per cent of the speeches made, were arguments in favor of restricting the negro vote. That was the one thought of the people and the delegates of the Convention, and but for the hope that some scheme might be adopted to place the political control of the State in the hands of the white people, the Convention would not have been assembled.
>
> Let Ingalls chew his cud till his jaws are tired, and make the most of the action of the Convention. The purpose for which it assembled, the restriction of suffrage, was largely accomplished. The people would have been satisfied with nothing less.
>
> In changing the organic law so as to give the white people control of the government, without the necessity of 'heroic campaigns,' the Convention did not expect nor desire to please such men as Mr. Ingalls, and our people are indifferent to their ravings now as they were to their wishes then. The white people of Mississippi will control the affairs of the State. Mr. Ingalls can quote this in his next speech.

In *Mississippi Constitutions* (1928), George H. Ethridge, an associate judge of the Supreme Court of Mississippi, discussed various sections of the Constitution of 1890. Referring to Section 241, he stated:[60]

> [fol. 847] It is said that this section while it does not discriminate against any person or race, it discriminates as to their character and nature.
>
> * * * * * * *
>
> This is one of the methods of disfranchising the negro, because the ignorant negro more often committed these offenses than members of the white race. Although the constitutional convention could not discriminate against the race under the Fifteenth Amendment, it could dis-

[60] P90-53. George Ethridge. *Mississippi Constitutions.* (Jackson, Mississippi: Tucker Printing House, 1928), p. 424.

criminate against the criminal tendencies of that race and did so as a means of getting rid of the evil effects of the Fifteenth Amendment.

Referring to Section 244, Judge Ethridge explained: [61]

> Of course, a person who cannot read would be largely at the mercy of the registrar in testing his understanding of the constitution. The registrar could pick out any section he desired and read it to him and call on him to explain it.

He said that Section 251: [62]

> . . . was a part of the scheme to acquire white supremacy, and the convention was searching the field of expedients for methods to accomplish that end, which this section was one of the factors in obtaining.

Judge Ethridge also discussed the apportionment plan contained in Section 254 of the Constitution of 1890: [63]

> On account of the large negro population in some of the counties compared to whites the voting strength of a [fol. 848] county is no real index of its population for negroes do not often participate in the general elections and under the primary election law each party must nominate its candidates by a primary and only the party represented by the whites has such a primary. It is probable that originally the convention was apportioning members of the legislature according to race population and that it was a part of the scheme of guaranteeing honest and capable government by having the legislature at all times under the control of the white counties, that is, counties in which the white population predominates. As has been seen in the article on franchise we had a great problem of maintaining

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[61] P90-54. George Ethridge. *Mississippi Constitutions.* (Jackson, Mississippi: Tucker Printing House, 1928), p. 429.

[62] P90-55. George Ethridge. *Mississippi Constitutions.* (Jackson, Mississippi: Tucker Printing House, 1928), p. 435.

[63] P90-56 George Ethridge. *Mississippi Constitutions.* (Jackson, Mississippi: Tucker Printing House, 1928), p. 439.

honest and efficient government in the state while the ignorant, vicious and transient negro could vote and under the federal act readmitting Mississippi to the Union it was somewhat doubtful whether the Congress would acquiesce in any scheme that would deny the negro the right to vote.

. . . . . .

Therefore it was wise to provide for such apportionment as would secure the control of the legislature by the intelligent and patriotic white race.

In apportioning representatives by creating flotorial districts the same result could be accomplished, thus guaranteeing white supremacy in the legislature even should the franchise provisions prove ineffective. By other sections the elective votes were provided for and in case a candidate did not get both the popular vote and the electoral vote the election of the governor and other state officers were elected by the house of representatives thus making provision for white supremacy in the executive department.

[fol. 849] In reference to Section 256 Judge Ethridge said: [64]

This is one of the sections providing for white supremacy in the state. It grouped the counties in such a fashion that the white votes as then located, would at all times be enabled to control the legislature.

The qualification of an educational nature, as well as all the others can be overcome in time, but if the people preserve their knowledge of the past and love free, orderly government under wise and patriotic white men, they will preserve these contrivances which guarantee white supremacy in the state government although so far the suffrage qualifications have operated effectively and it has not been necessary to resort to legislative election under these other sections to accomplish that purpose.

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[64] P90-57. George Ethridge. *Mississippi Constitutions.* (Jackson, Mississippi: Tucker Printing House, 1928), p. 445.

[fol. 850] ANSWER TO INTERROGATORY NUMBER 2(B) AS TO THE NAME AND OFFICIAL CAPACITY, IF ANY, OF EACH PERSON WHO THE UNITED STATES CLAIMS WAS MOTIVATED BY A PURPOSE TO RESTRICT THE NEGRO FRANCHISE AND TO ESTABLISH AND PERPETUATE WHITE POLITICAL SUPREMACY AND RACIAL SEGREGATION AND THE SPECIFIC MANNER OR MEANS BY WHICH SUCH PURPOSE WAS EXECUTED OR PUT INTO EFFECT.

The name and official capacity of each person who was motivated by this purpose and the specific manner or means by which such purpose was executed or put into effect are as follows:

S. S. Calhoon, —President of the Constitutional Convention, delegate from Hinds County, Attorney and Judge.

J. L. Alcorn, —delegate from Coahoma County, and Attorney.

B. H. Allen, —delegate from Tishomingo County.

A. Arrington, —delegate from Jones County and member of the Mississippi House of Representatives.

Jno. A. Bailey, —delegate from Lauderdale County.

Jno. R. Baird, —delegate from Sunflower County.

W. L. Bassett, —delegate from Neshoba County.

Thos. P. Bell, —delegate from Kemper County, and Attorney.

Jas. R. Binford, —delegate from Montgomery County.

H. I. Bird, —delegate from Lawrence County.

W. A. Boyd, —delegate from Tippah County.

D. Bunch, —delegate from Yazoo County.

R. B. Campbell, —delegate from Washington County.

J. P. Carter, —delegate from Perry County.

J. B. Chrisman, —delegate from Lincoln County and Judge of Circuit Court of Mississippi, Seventh District.

R. A. Dean, —delegate from Lafayette County and member of Mississippi Senate.

[fol. 851]

W. M. Denny, —delegate from Jackson County.
Geo. G. Dillar, —delegate for Noxubee County and member of Mississippi Senate.
Geo. L. Donald, —delegate from Clarke County and Sheriff of Clarke County.
G. W. Dyer, —delegate from Panola County.
Jas. W. Edwards, —delegate from Lowndes County.
Wm. S. Farish, —delegate from Issaquena County and District Attorney of Mississippi, Fourth District.
D. S. Fearing, —delegate from Hinds County.
J. W. Fewell, —delegate for State-at-Large.
Geo. J. Finley, —delegate from Marshall County.
J. D. Fontaine, —delegate from Pontotoc County.
T. S. Ford, —delegate for State-at-Large.
J. Z. George, —delegate for State-at-Large and Senator in the United States Congress.
F. M. Glass, —delegate from Attala County.
N. D. Guerry, —delegate from Lowndes County.
A. B. Guynes, —delegate from Copish County.
D. T. Guyton, —delegate from Attala County.
F. M. Hamblett, —delegate from Quitman County.
J. G. Hamilton, —delegate from Holmes and Yazoo Counties.
T. L. Hannan, —delegate from Choctaw County.
W. P. Harris, —delegate from Hinds County.
T. T. Hart, —delegate from Hinds County.
N. C. Hathorn, —delegate from Covington County.
Jno. Henderson, —delegate from Clay County.
Elliot Henderson, —delegate from Harrison County.
P. Henry, —delegate for State-at-Large and member of the Mississippi Senate.
C. K. Holland, —delegate from Calhoun County.

[fol. 852]

H. S. Hooker, —delegate from Holmes County.
R. G. Hudson, —delegate for State-at-Large.
Thos. D. Isom, —delegate from Lafayette County.
J. H. Jamison, —delegate from Noxubee County.
D. S. Johnson, —delegate from Chickasaw County.
J. H. Jones, —delegate for State-at-Large and member of the Mississippi Senate.
Walter L. Keirn, —delegate from Holmes County and Levee Commissioner for Holmes County.
James Kennedy, —delegate from Clay County.
J. Kittrell, —delegate from Green County.
W. J. Lacey, —delegate from Chickasaw County.
R. C. Lee, —delegate from Madison County.
S. D. Lee, —delegate from Oktibbeha County and President of Mississippi Agriculture and Mechanical College.
T. P. Lee, —delegate from Yazoo County.
Geo. H. Lester, —delegate from Yalobusha County.
W. F. Love, —delegate from Amite County.
E. J. Marett, —delegate from Marshall County.
Edward Mayes, —delegate for State-at-Large and Chancellor of the Univeristy of Mississippi.
Monroe McClurg, —delegate from Carrol County.
Will T. McDonald, —delegate from Benton County and member of the Mississippi Senate.
F. J. McDonnell, —delegate from Monroe County.
J. H. McGehee, —delegate from Franklin County.
G. T. McGehee, —delegate from Wilkinson County.
F. A. McLain, —delegate from Amite and Pike Counties.
Wm. C. McLean, —delegate from Grenada County.
J. S. McNeily, —delegate for State-at-Large.

[fol. 853]

Issiah T. Montgomery,—delegate from Bolivar County,
Jordon L. Morris, —delegate from Wayne County.
H. L. Muldrow, —delegate for State-at-Large.
J. R. Murff, —delegate from Monroe County.
T. V. Noland, —delegate from Wilkinson County and member of Mississippi House of Representatives.
J. W. Odom, —delegate from DeSoto County.
S. E. Packwood, —delegate from Pike County.
J. K. P. Palmer, —delegate from Scott County.
A. J. Paxton, —delegate from Washington County.
C. O. Potter, —delegate from Union and Pontotoc Counties.
Sam Powel, —delegate from DeSoto County.
J. R. Puryear, —delegate from Tate County and member of Mississippi House of Representatives.
Chas K. Regan, —delegate from Claiborne County.
L. P. Reynolds, —delegate from Alcorn County.
L. I. Rhodes, —delegate from Lee County.
W. C. Richards, —delegate from Lowndes County.
S. W. Robinson, —delegate from Rankin County.
J. P. Robinson, —delegate from Union County.
J. J. Rotenberry, —delegate from Yalobusha County.
J. S. Sexton, —delegate for State-at-Large.
Jno. M. Simonton, —delegate from Lee County.
H. F. Simrall, —delegate from Warren County.
Murray F. Smth, —delegate from Warren County.
W. F. Spence, —delegate from Hancock County.
H. M. Street, —delegate from Lauderdale County and member of the Mississippi House of Representatives.

[fol. 854]

T. W. Sullivan, —delegate from Carroll County and member of Mississippi House of Representatives.
E. O. Sykes, —delegate from Monroe County.

Allen Talbot,	—delegate from Benton and Tippah Counties and member of the Mississippi House of Representatives.
R. H. Taylor,	—delegate from Panola County.
R. H. Thompson,	—delegate from Lincoln and Jefferson Counties.
Steve H. Turner,	—delegate from Itawamba County.
T. S. Ward,	—delegate from Madison County.
Olivar C. Watson,	—delegate from Winston County.
W. C. Wilkinson,	—delegate from Copiah County.
Frank K. Winchester,	—delegate from Adams County.
Wm. D. Witherspoon,	—delegate from Lauderdale, Kemp, and Clarke Counties and member of the Mississippi House of Representatives.
W. P. Wyatt,	—delegate from Tate County.

Each of the 104 delegates named in the preceding list was motivated by the purpose of restricting the Negro franchise and of establishing and perpetuating white political supremacy and racial segregation in Mississippi to the extent that each of them voted in favor of adopting the Constitution of 1890.[1]

The vote of each of these delegates for the adoption of the Mississippi Constitution was the specific manner and means by which such purpose was executed.

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[1] P90-59, *Journal of the Proceedings of the Constitutional Convention of the State of Mississippi.* (Jackson, Mississippi: E. L. Martin, 1890), pp. 637-638.

[fol. 855] ANSWER TO INTERROGATORY NUMBER 4 (B) AND (C) AS TO THE NAME AND OFFICIAL CAPACITY, IF ANY, OF EACH PERSON WHO THE UNITED STATES CLAIMS DESIGNED SECTION 244 OF THE MISSISSIPPI CONSTITUTION OF 1890 TO ACCOMPLISH THE PURPOSE OF RESTRICTING THE NEGRO FRANCHISE AND ESTABLISHING AND PERPETUATING WHITE POLITICAL SUPREMACY AND RACIAL SEGREGATION IN MISSISSIPPI, AND AS TO THE PARTICULAR MEANS OR MANNER BY WHICH THIS DESIGN WAS ACCOMPLISHED OR PUT INTO EFFECT.

The name and official capacity, if any, of each person who the United States claims designed Section 244 of the Mississippi Constitution of 1890 to accomplish the purpose of restricting the Negro franchise and establishing and perpetuating white political supremacy and racial segregation in Mississippi are as follows:

R. C. Patty
Z. B. George
W. T. Martin
Sam Powel
R. G. Hudson
G. H. Lester
W. C. Richards
J. A. Blair
J. S. McNeily
J. B. Boothe
J. M. Simonton
J. M. Street
R. A. Dean
Monroe McClurg
H. S. Hooker
W. H. Morgan
G. T. McGehee
J. R. Binford
T. P. Bell
J. R. Puryear
L. P. Reynolds
C. K. Regan

One of the duties of the Committee on Elective Franchise, Apportionment, and Elections was to draw up the qualifications for electors in Mississippi. The proposal made by this committee regarding voter qualifications was adopted

by the Convention,[1] and the proposal became Article XII, Section 244, of the Mississippi Constitution of 1890.

[fol. 856] Each of the persons named in the preceeding list was a member of the Franchise Committee who voted in favor of adopting Section 244 of the Mississippi Constitution.

The vote cast by each of these persons in favor of adoption of Section 244 was the particular means by which the design of restricting the negro franchise and establishing and perpetuating white political supremacy and racial segregation in Mississippi was accomplished.

[fol. 857] ANSWER TO INTERROGATORY NUMBER 7 AS TO THE FACTUAL BASIS FOR THE ASSERTION AND ALLEGATIONS MADE IN PARAGRAPH 21 OF THE COMPLAINT THAT DURING THE PERIOD FROM 1899 TO APPROXIMATELY 1952, WHITE POLITICAL SUPREMACY IN MISSISSIPPI WAS MAINTAINED AND PROMOTED BY THREE METHODS AMONG OTHERS: NEGROES WERE NOT ALLOWED TO REGISTER; TO VOTE; LITERATE NEGROES WERE REQUIRED TO INTERPRET SECTIONS OF THE MISSISSIPPI CONSTITUTION; NEGROES WERE EXCLUDED FROM DEMOCRATIC PRIMARY ELECTIONS.

The factual basis for the assertion and allegations made in Paragraph 21 of the Complaint that during the period from 1899 to approximately 1952, white political supremacy in Mississippi was maintained and promoted by three methods among others is as follows:

I. Statements By Negroes Who Were Not Allowed to Register to Vote

Appendix A includes record of the experiences of Negroes who were refused registration in Mississippi counties during the period from 1890 through 1955.

[fol. 858] II. Statistics for the Period 1890 Through 1952

In 1899 there were approximately 140,000 registered voters in Mississippi. Of this total approximately 18,000 or

[1] P 90-58, *Journal of the Proceedings of the Constitutional Convention of the State of Mississippi.* (Jackson, Miss. E. L. Martin, 1890), P. 269-270.

13% were Negroes.[1] At this time Negroes constituted over 57% of the voting age population of the State.[2]

During the period from 1899 through 1952 Negroes constituted at least 45% of the total population of the State.[3] As late as 1952 over 41% of the voting age population in Mississippi were Negroes.[4] Certain registration books of six Mississippi counties for periods prior to 1953 have been photographed and examined. Among these counties are Grenada, Hinds, Jefferson Davis, Panola, Quitman and Tunica.

[fol. 859] The registration statisties from these books show the percentage of Negroes registered to vote in Mississippi has declined steadily during the last seventy years, although the rate of illiteracy among Negroes of voting age decreased steadily during the same time. In 1899 the rate of illiteracy was approximately 53%.[5] By 1952 it was less than nine per cent.[6]

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[1] C-4. *Biennial Report of the Secretary of State to the Legislature of Mississippi for the Years 1898 and 1899.* (Jacksonville, Florida: Vance Printing Co., State Printers for Mississippi, 1900), p. 171.

[2] C-6. *Biennial Report of the Secretary of State to the Legislature of Mississippi for the Years 1898 and 1899.* (Jacksonville, Florida: Vance Printing Co., State Printers for Mississippi, 1900), p. 154.

[3] C-17. *U. S. Census of Population: 1960. General Population Characteristics, Mississippi.* Final Report PC(1)-26B. U. S. Bureau of the Census (Washington, D. C.: Government Printing Office, 1961), p. 26-26.

[4] C-15 and C-16. *U. S. Census of Population: 1960. General Population Characteristics, Mississippi.* Final Report PC(1)-26B. U. S. Bureau of the Census. (Washington, D.C.: Government Printing Office, 1961), pp. 26-27 and 26-30.

[5] C-9. *Negroes in the United States.* Department of Commerce and Labor, Bureau of the Census. Bulletin 8. (Washington, D. C.: Government Printing Office, 1904), p. 136.

[6] E-67. *Statistical Data on School Session, 1952-1953.* Mississippi Department of Education, Division of Administration and Finance, p. 1.

A. In *Grenada County* between 1892, the year of the state-wide re-registration, and 1896, 303 Negroes became registered to vote.[7] The registration books for the City of Grenada, where almost 40% of the county population reside, indicate that between 1896 and 1948, a period of more than fifty years, less than seventy Negroes have become registered.

B. In *Hinds County* only about 226 Negroes registered in this county between 1892 and 1934.

The registration books also indicate that during the next registration period, 1934 through 1940, only 117 Negroes registered to vote, a decrease of 40%.

Another new registration period extended from 1941 through 1949. During this time approximately 1,450 Negroes in Hinds County registered to vote. Of this total, only 175 [fol. 860] were registered between 1941 and 1945. The majority of the increase was due to the registration of war veterans who applied between 1946 and 1948. in 1946, 390 Negroes were registered; in 1947, 651; and in 1948, 185; by 1949, the number of Negro registrants for the year had dropped to 56.

C. In *Jefferson Davis County* the registration books for 16 precincts indicate that from 1905 through 1922, 847 Negroes became registered to vote. In 1923 a re-registration was held. By 1934, the end of this registration period, the Negro registration had dropped to 289, a decrease of more than 65%. By 1948, the Negro registration for these same 16 precincts had increased to only 520. Thus, from 1903 to 1948 Negro registration dropped over 39%.

In another precinct in Jefferson Davis County there were 21 Negroes registered to vote during the registration period 1905 through 1922. In 1948 there were only two Negroes still registered.

D. In *Panola County*, registration books show that in the ten year period between 1876 and 1885, at least 1,600

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[7] C-3. *Biennial Report of the Secretary of State to the Legislature of Mississippi for the Years 1898 and 1899.* (Jacksonville, Florida: Vance Printing Co., State Printers for Mississippi, 1900), p. 167. (page 2 of Exhibit C-3)

Negroes registered to vote. In 1896, after the state re-registration, the number of registered Negroes in the county was 114 [8] and by 1899 had increased to 385.[9] In 1963, there

[fol. 861] E. In one *Quitman County* precinct over 200 Negroes were registered between 1877 and 1890, a period of 14 years. A re-registration was made in 1892. For the years 1892 through 1950, a period of 57 years, Negro registration totaled less than 160 persons.

F. In *Tunica County,* Tunica precinct had at least 57 Negroes registered from 1899 to 1904. After a re-registration in 1919, no Negroes appeared on the books of that precinct. By 1928 in all precincts in the county there were only six Negroes registered. The poll books for 1946 through 1952 show only four Negroes registered during that period.

[8] C-2. *Biennial Report of the Secretary of State to the Legislature of Mississippi for the Years 1896 and 1897.* (Jackson, Mississippi, 1897), p. 67. (page 2 of Exhibit C-2)

[9] C-3. *Biennial Report of the Secretary of State to the Legislature of Mississippi for the Years 1898 and 1899.* (Jacksonville, Florida: Vance Printing Co., State Printers for Mississippi, 1900), p. 168. (page 3 of Exhibit C-3)
were 2 negroes registered.

[fol. 862]

III

White Primary Elections in the State of Mississippi

In 1902 the legislature of Mississippi made mandatory the primary election system as the method for choosing candidates for public offices.[1]

In 1903 Major J. K. Vardaman, candidate for governor, asked that none but white Democratic voters be allowed to participate in the primary.[2] The Hinds County Democratic Executive Committee resolved in 1903 as follows:

> Be it resolved by the Democratic primary election held in Hinds County on the 6th day of August, 1903 for the purpose of nominating candidates for State, District, County, and County District Offices and if a second primary election becomes necessary that the same be held on the 27th day of August, 1903 and that said election be held and governed by the laws of the State of Mississippi. *All white Democrats possessing the qualifications required by law and the State Democratic Committee are allowed to participate in said elections.*[3] (emphasis added)

In 1903, the Fayette County Democratic Executive Committee prohibited Negroes from voting in the primary:

> The Fayette County Democratic Executive Committee met yesterday and decided to print the names of all State, National, and District candidates on the ticket without any charge.
>
> *White democrats only will be allowed to vote the primary.*[4] (emphasis added)

[fol. 863] The Democratic State Executive Committee met in 1907 and resolved that the primary elections for State offices should be for white persons only. The following is a report of this meeting: (emphasis added)

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[1] Miss. Session Laws, 1902, Ch. 66.

[2] The Clarion-Ledger, July 24, 1902, p. 4.

[3] The Clarion-Ledger, July 7, 1903, p. 1.

[4] The Clarion-Ledger, July 16, 1903, p. 1.

The Democratic State Executive Committee met yesterday at noon in the Senate chamber *for the purpose of naming the dates of the Democratic primary* for the nomination of candidates for the Fall election.

On motion, a committee was appointed headed by Chairman Lomax to draft a form for ballot to be used in the primary and the other members were Messrs. Haley and George.

The committee on resolutions—Messrs. Sterling, Fant, Rainey, and George *submitted the following report which was adopted:*

> Resolved that the primary election for the selection of the nominees of the Democratic Party to be held on the first day of August 1907 and the second primary to be held on Thursday the 27th day of August, 1907.
>
> Resolved, *in addition to the qualifications prescribed by law for the voters in said primaries, all voters therein shall be white democrats.*[5]

The State Democratic Executive Committee met on August 10, and 11, 1915 to discuss the August 3, 1915, pri- [fol. 864] mary election. Various resolutions which were proposed with respect to the integrity of this election indicate that it was understood that primary elections were only for white persons. A resolution by L. C. Hollum which was unanimously passed read, in part, as follows:

> Whereas, said resolutions in a general way and without any foundation in fact unjustly reflect on the white democratic elections in this state, and . . .
>
> Be it resolved by the State Democratic Committee that we hereby declare the election just concluded an honest and patriotic expression of the choice of the white democrats of Mississippi for the nominees to the various offices voted on.

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[5] *The Clarion-Ledger*, June 6, 1907, p. 3.

> Be it further resolved, that we heartily congratulate all the defeated candidates from Governor down for the manner in which they gracefully accepted the verdict registered on August 3rd by the White Democrats of Mississippi. . . .[6]

[fol. 865] Regulation adopted by the State Democratic Executive Committee on July 1, 1922, for holding Democratic Primary Elections on August 15 and September 5, 1922 state, in part, as follows:

> That only white Democrats who are duly and legally qualified electors that voted the Democratic ticket in the presidential election of 1920, or who would have done so had they gone to the election, or been legally entitled to vote in that election, Be Allowed to Vote in Such Primary.[7]

In 1944 the Supreme Court of the United States held that prohibiting Negroes from voting in "white primaries" was unconstitutional. Many Negroes returning from World War II decided to vote on July 2, 1946, in the Democratic primary election for United States Senator. Senator Theodore Bilbo who was renominated to the Senate in this primary, testified before a Special Senate Committee in 1946 as follows:

> Please let me call your attention to the fact that this is the first Democratic primary held in Mississippi in 56 years where the Negro citizens of this State have offered or attempted to vote, and you can readily appreciate the keen interest that was aroused throughout the state among the white Democratic voters as well

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[6] Minutes of the Democratic Executive Committee of Mississippi—August 10-11th, 1915. J. M. McBeath, chairman. Douglass Robinson—Secretary Pro Tem: Mississippi —State Department of Archives.

[7] Regulations adopted at meeting in Jackson, Miss. on July 1, 1922. Robert Powell, Chairman; D. F. Lawrence, Secretary.

as the great opposition such attempt aroused in the minds of all the people of this State.[8]

[fol. 866] Efforts were made by party officials to prevent Negroes from voting in the July 2, 1946 primary election in Mississippi.

George Butler, a member of the State Democratic Executive Committee, testified before the Senate Committee.

> Back in the old days the State Democratic executive committee, by resolution, at each election specified that only white Democrats should be permitted to take part in the Democratic—in the Democratic primary.
>
> [Butler then proceeds to discuss a meeting of the State executive committee in 1946 to decide how to deal with Negro voters in the July 2 primary.]
>
> The opinion of the majority of the committee was—I think all of them, in fact—certainly all of those who were lawyers, who had studied these cases and listened to our report—thought that under the Texas case and the Georgia case that if the Negro possessed all the qualifications enumerated in the statute, was duly registered, and so forth and so on, that he had a legal right to vote. I think it was the unanimous opinion—although nothing was spread on in this about it—that they didn't want him to vote, therefore, he wouldn't vote, and we thought the best thing to do was to say nothing and not agitate the matter one way or another and let matters take their course, and so that course was pursued.[9]

[fol. 867] Senator Bilbo, the senior Senator from Mississippi, was quoted as saying during the 1946 campaign:

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[8] *Hearing Before The Senate Special Committee to Investigate Campaign Expenditures,* 1946, 79th Congress, 2nd Session, p. 333.

[9] Hearing Before the Senate Special Committee to Investigate Campaign Expenditures, 1946, 79th Congress, 2nd Session P. 371-372.

> Mississippi is white. We got the right to keep it that way and I care not what Tom Clark and Hugo Black say. . . . I'm calling on every red-blooded American who believes in the superiority and integrity of the white race to get out and see that no nigger votes.[10] [Use all the power, the legal power, lawful power and persuasion.[11]]

Senator Bilbo delivered a speech over a state-wide radio hook-up the night of July 1, 1946, in which he said:

> The eyes of the Nation will be upon Mississippi tomorrow. In other elections many white citizens of the State have failed for various reasons to go to the polls and exercise the greatest privilege of American citizens—the privilege of voting. But, on tomorrow, in Mississippi's white, senatorial primary election, it is vitally important that every white Democratic man and woman should make every sacrifice, and that nothing should hinder them from participating in this primary election.[12]

[fol. 868] Many Negroes who went to the polls on July 2, 1946, were not permitted to vote in the primary. For example, a bailiff from Harrison County stated that he turned all Negroes away from the polls under instructions from the election commissioners.[13] Some Negroes were warned before the primary not to attempt to vote. For example, the Mayor of Greenwood in Leflore County called in two Negroes to pass along the warning that any Negroes who tried to vote would not be protected.[14]

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[10] Article by Harry Henderson and Sam Shaw, Colliers, July 6, 1946.

[11] Senator Bilbo, in his testimony before the Senate Special Committee, verified this quote but said that this additional clause had been omitted. See p. 350.

[12] *Hearings*, p. 382.

[13] Testimony of Eaton Garriga in *Hearings Before Senate Special Committee*, p. 298.

[14] Testimony of Shelby S. Steele, *Hearings*, pp. 250-263.

In 1947, the Mississippi Legislature enacted laws to require that persons in order to vote in a primary election be in accord with the principles of the party holding the primary.[15] Any person may be challenged at the polls as to his qualifications and accord with the principles of the party.[16]

From 1948 on, the Democratic party of Mississippi excluded Negroes from primaries by framing statements of party principles that Negroes could not subscribe to.[17] For example, in 1952 the Mississippi Legislature passed a resolution setting out and endorsing the principles and resolutions adopted by the Democratic State Executive Committee on March 18, 1952.[18] The principles include opposition to FEPC legislation, opposition to anti-poll tax legislation, opposition to federal anti-lynching laws, advocacy of segregation of the races, and opposition to the repeal or modifi- [fol. 869] cation of the segregation laws of the State.

In the August 1955 primaries numerous Negroes, even though registered, were denied the right to vote in the Democratic primary. Mr. Tom J. Tubb, Chairman of the State Democratic Executive Committee, was quoted as follows:

> We don't intend to have Negroes voting in this primary but we also intend to handle it in a sensible orderly manner. We don't want any incidents.
>
> The Negroes are better off that way than trying to vote out here in the country and being taken out behind the barn and given a whipping like some of these country boys plan to do.[19]

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[15] Mississippi Session Laws, 1947, Ex. Ch. 17.

[16] Section 3129, Mississippi Code Ann.

[17] Resolutions of Mississippi Democratic Party, 1948, 1952, 1960.

[18] Session Laws of Mississippi, 1952, Ch. 464.

[19] *New York World Telegram*, New York, New York, Aug. 2, 1955.

Tubb conceded that where the state pays the cost of the primary, as in Mississippi, Negroes cannot be denied the right to vote under the usual qualifications.

> But we usually run our own affairs down here. If they vote, they will get their ballots challenged and they will be thrown out of the party.
>
> Negroes have pretty good sense and we shouldn't have any trouble with them. It should not take night riding or beatings for them to use their own good judgment.[20]

In Mr. Tubb's home county, Clay County, where he was County Democratic Executive Committee Chairman as well as State Democratic Executive Committee Chairman, there were only 12 Negroes registered to vote in 1955. The election officials were told to challenge Negro voters and the lone Negro who showed up to vote in the primary election on [fol. 870] August 2, 1955, was told his vote would be challenged and did not vote. The same thing was happening in Humphreys County, where there were only 38 qualified Negro voters. Negroes were required to write answers to questions concerning their views on segregation, etc., and then were not permitted to vote in the August, 1955 primaries. In Claiborne County Negroes were not permitted to vote in the 1955 primaries and, in fact, Claiborne County maintained a white primary until the Congressional election on June 5, 1962. In Montgomery County there were only 10 Negroes registered to vote in 1955 but their names were listed only on the general election poll books and not the primary poll books pursuant to instructions of the County Democratic Executive Committee. Negroes were also not permitted to vote in primary elections in 1955 in Lowndes County and in Sunflower County.

The specific information on these white primaries is set out below.

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[20] *State Times*, Jackson, Mississippi, Aug. 3, 1955, p. 1.

[fol. 871] Negroes Not Permitted to Vote Prior to 1955

Sunflower #12

County Seat: Indianola, Mississippi

67044	1953 or 1954 Waxer (Town Marshal)	When he tried to vote in the primary election of 1953 or 1954 by placing his ballot in the ballot box, George Waxer, Town Marshall, challenged his and his wife's ballot, and put them in two envelopes. These were then put under the ballot box.

[fol. 872] Winston #37

County Seat: Louisville, Mississippi

80000	7-2-46 Denied White Men	He was twice not allowed to vote on 7-2-46 in a Democratic Primary Election for U. S. Senator. Four unidentified white men would not let him enter the polling place, although he was a registered voted, on either of his two attempts that day.
80002	7-2-46 Refused White Man	Although he was registered to vote, he was twice refused permission to vote in the Democratic Primary of 7-2-46 to choose a U. S. Senator by unidentified white men.

[fol. 873] Claiborne #39

County Seat: Port Gibson, Mississippi

11031	Late 40's Early 50's Denied Beardon (Deceased)	In the late 1940's or early 1950's he went to the polls to vote but was told he didn't vote in the Democratic Primary; that it was in November when he could vote.

[fol. 874] Harrison #79

County Seat: Gulfport, Mississippi

The following events, 24000-24014, occurred: Pass Christian

24000	7-2-46 Denied Elec. Off'l	Although a qualified voter, he was turned away from polls on 7-2-46 by bailiff who told him that Negroes could not vote in primary.
24001	7-2-46 Denied Elec. Off'l	Although a qualified voter, he was turned away from polls on 7-2-46 by bailiff who told him that Negroes could not vote in primary.
24002	7-2-46 Denied Elec. Off'l	Although a qualified Negro voter, he was turned away from polls on 7-2-46 by bailiff who told him that Negroes could not vote in primary.
24003	7-2-46 Denied Elec. Off'l	Although a qualified voter, he was turned away from polls on 7-2-46 by bailiff who told him that Negroes could not vote in primary.

24004	7-2-46 Denied White Men	He went with wife to vote in primary. Was stopped at City Hall by a crowd of men. Was knocked down and prevented from entering and voting. Was threatened with death if he tried to vote that day.
24005	7-2-46 Denied Elec. Off'l	Although a qualified voter, he was turned away from polls on 7-2-46 by bailiff who told him that Negroes could not vote in primary.
24007	7-2-46 Denied Elec. Off'l	Although a qualified voter, he was turned away from polls on 7-2-46 by bailiff who told him that Negroes could not vote in primary.
24008	7-2-46 Denied Elec. Off'l	Although a qualified voter, he was turned away from polls on 7-2-46 by bailiff who told him that Negroes could not vote in primary.
24009	7-2-46 Denied Elec. Off'l	Although a qualified voter, he was turned away from polls on 7-2-46 by bailiff who told him that Negroes could not vote in primary.

[fol. 875]

24011	7-2-46 Denied Elec. Off'l	Although a qualified voter, he was turned away from polls on 7-2-46 by bailiff who told him that Negroes could not vote in primary.
24012	7-2-46 Denied Elec. Off'l	Although a qualified voter, he was turned away from polls on 7-2-46 by bailiff who told him that Negroes could not vote in primary.
24013	7-2-46 Denied Elec. Off'l	He had registered to vote and had voted in City Primary on 6-4-46. He tried to vote in Senatorial Primary of 7-2-46 and was told by Election Official, Garriga, that no Negroes were permitted to vote. Turned around and left.
24014	7-2-46 Denied Elec. Off'l	Although a qualified voter, he was turned away from polls on 7-2-46 by bailiff who told him that Negroes could not vote in primary.

[fol. 876] Negroes Not Permitted to Vote in Primary and General Elections in Mississippi Since March, 1955

Bolivar County #1

There is an all Negro precinct in Bolivar County in the all Negro town of Mound Bayou, Mississippi. When the ballot box was received from the county officials by the election officials at Mound Bayou it contained a written challenge signed by each of the candidates for office in the county. This occurred at the August 2, 1955 Primary and again at the Run-Off Primary on August 23, 1955. The challenge was identical each time except for the dates and signers thereof. It was addressed "To the Managers Designated to Hold the Primary Election To Be Held August 23,

1955, at the Mound Bayou Election Precinct, Bolivar County, Mississippi."

The candidates challenged each and every person who attempted to vote at the Mound Bayou Precinct on the grounds, among others, that the registrants at that precinct were not in accord with the statements of the principles of the Democratic Party declared by the State Convention of the Democratic Party of Mississippi, held March 18, 1952, a copy of which was attached to the challenge and which also appears in HCR No. 7, Chapter 464 of the Acts of the 1952 Legislature. Among other principles is the principle which follows:

[fol. 877] "We believe in the segregation of the races and are unalterably opposed to the repeal or modification of the segregation laws of this State, and we do not favor the practice of nonsegregation."

There were approximately 295 registered voters in the Mound Bayou Precinct in 1955.

The following Negroes were informed that Negro votes were challenged.

6000—Aug. 2, 1955 —Served as election official

6012—Aug. 2 and
Aug. 23, 1955—Served as election official

6002—Aug. 2, 1955 —Served as election official—Read the challenge to Negro voters of the precinct

6004—Aug. 23, 1955—Served as election manager

6005—Aug. 2, 1955 —Read the challenge to Negro voters of the precinct

6009—Aug. 2 and
Aug. 23, 1955—Served as election official

[fol. 878] Tunica #8

The following Negro citizens of Tunica County were deterred from voting in Tunica County at the Tunica County Courthouse.

72009	4-18-55 Deterred White woman	Voted in county election in 1955. Attempted to vote in 1960 presidential election but was advised not to by a white woman clerk in courthouse.
72004	Aug., 1955 Deterred Judge Lowe	Was not permitted to vote at poll until he got poll tax exemption certificate. When he obtained one, a county judge, apparently an election official, made him take an oath before allowing him to vote, the oath consisting of whether he believed in segregation and was a member of NAACP. He was told his beliefs were counter to those of the Democratic Party and his vote could be challenged and not counted, but was permitted to vote. After the primary he was threatened economically by Alec Perry, a white planter. Perry said if any Negro on his farm voted he would mechanize the farm and lay Negroes off. Marvin Watson, a white merchant told him that the white people would run Tunica County and could do without his business. Paul Phillips, Editor of Tunica Times Democrat, told him the paper would no longer carry Grant's column.
72006	1956 Deterred Election official	Voted at Tunica County Courthouse in 1956 in a state election. James Watson, Herbert Ammons, Ivory Grant and Joseph Grant also voted. She was asked whether she was a member of the NAACP by an election official. Her ballot was contested and placed in a box for challenged votes. Ammons was fired, Watson and his wife lost their jobs, Mrs. Grant transferred to smaller school soon thereafter.

[fol. 879] Humphreys County #10

V. B. Montgomery, the Chairman of the Executive Committee of the Democratic Party of Humphreys County in 1955 said that Negroes who appeared to vote at the Belzoni Precinct on August 2, 1955 were asked questions along the following lines:

1. Are you a member of the Democratic Party?
2. Do you believe in and do you want to see continued our southern traditions and heritage?
3. Are you in accord with the principles of the Mississippi Democratic Party?
4. Are you in accord with the laws of Mississippi relating to separate schools for races?

There were 38 qualified Negro voters in Humphreys County in 1955, 33 of whom lived in the Belzoni Precinct. Negroes who attempted to vote in the August 2, 1955 primary were asked these questions and were not given ballots. No Negroes were permitted to vote on August 2 and none tried in the run-off on August 23, 1955.

The following Negroes who attempted to vote on August 2, 1955 at the courthouse in Belzoni indicate the way Negroes were denied the right to vote:

[fol. 880] Humphreys County #10

27000 8/2/55

He went alone to vote and on arriving he saw a number of other Negroes waiting to vote. When he was permitted to enter the polling area he gave his poll tax receipts to an election official who then gave him a list of questions to answer. The questions asked were (1) are you a member of the Democratic Party?; (2) do you believe in segregation?; (3) do you believe in the democratic form of government?; (4) do you believe in miscegenation?, and other questions. He wrote answers to the questions and returned the sheet to the election official who read his answers and told him he was not qualified to vote. He then left and told the Negroes outside the polling area to go away as he did not feel there was any use in them trying to answer the questions.

27001 8/2/55

Went with 5 others to vote in primary. Was given a list of questions to answer. The questions concerned whether or not he believed in segregation in schools and swimming pools and explain miscegenation and do you believe in it, and other questions. He did not try to answer them. When he left he told the other Negroes waiting outside they might as well leave. They all then left. Other Negroes there were Mason Payne, Professor Griffin Byrd, Professor L. L. Knowles and Willie Henry Browder.

27003 8/2/55

Went with other Negroes to vote. After presenting his poll tax receipts his right to vote was immediately challenged by Gladstone Mortimer, a white man. Mortimer handed him a sheet of questions among which were: (1) are you a member of the Democratic Party? (2) Do you believe in segregation of schools, parks, and public places? (3) what is meant by miscegenation? He wrote out the answers to the questions and gave them to an election official who told him he had not qualified and did not give him a ballot. Knowles then left and told the other Negroes who were waiting that he did not think there would be any use in their attempting to vote.

[fol. 881] Sunflower County #12

Barry Wood, Jr., one of the managers of the Democratic Primaries held on August 2, and August 23, 1955 told the F.B.I. that a printed card regarding the challenging of Negro voters was received along with the other election material from the Circuit Court Clerk in Indianola. He said that during the first primary, five Negroes voted and all were challenged. They were Dr. C. C. Battle, John H. Lee, McKinley Holmes, Frank May, and Mary Lyles. During the second primary only two Negroes appeared to vote and John H. Lee voted without challenge while Dr. Battle was again challenged. He remembers that Dewitt Lovelace, Billy Barrett and Hugh French challenged one or more voters by merely saying "I challenge that vote." The challenged votes were put in envelopes and not considered by the election managers in tallying the vote. As far as he knows no white persons were challenged because of non-membership in the Democratic Party at either primary in his box.

The following Negro citizens of Sunflower County have had their votes challenged when they attempted to vote:

67005	67091
67044	67102
67087	67103
	67144

[fol. 882] Montgomery County #19

Mrs. William Edward Crenshaw, the Deputy Circuit Clerk of Montgomery County, told the F.B.I. on September 19, 1955, that she prepared the poll book called the general election poll book, which included the names of qualified Negro voters, and she was then directed by the Democratic Executive Committee to prepare a primary poll book, from which the Negroes were excluded as not being members of the Democratic Party in Mississippi.

[fol. 883] Webster #23

The following Negro citizen was not permitted to vote in Webster County.

78000	1955 White Man	Tried to vote in 1955 at the town hall in Mathiston, Miss. Was told he couldn't be an unknown white man. Has paid poll tax every year since he registered.
78000	1959 Norias Brooks	Tried to vote in 1959 gubernatorial primary. Marshall Norris told him to see Vernon Brooks who was running the election. Brooks advised him not to vote. He left and hasn't attempted to vote since.

[fol. 884] Yalabobusha #24

The following Negro was deterred from voting in Yalabobusha County.

81007 (1) In two elections in the late 1950's, the judge at the polling place took his ballot away after he had marked it but before he could put it in the ballot box.
In 1959 on the Saturday before the primary election he found a sign on his business door which read "You is getin to smart trin to vote. Mr. Harris. Have youre name took off them Bookes—Real soon like—an straiten yore friens".

(2) On the Monday before the 1959 primary he found another sign on his door which read: "Nigger get yore votin done before Tuesday." In Jan. 1960 he applied to Mr. Evans for an exemption certificate. It was given to him but only after Mr. Evans had told him, "Well I tell you Jimmy, we don't mind you votin. If I let you vote, others would want to and that wouldn't work." He has never voted since.

[fol. 885] Clay Co. #29

Thomas Tubb, the Chairman of the Mississippi State Democratic Committee and of the Clay County Democratic Committee personally requested the various election officials in Clay County to challenge all Negro voters on his behalf at the August 2 and August 23, 1955 primaries. He did this because he believed that Negroes were not members of the Mississippi Democratic Party. His legal basis for the challenges was Sections 3129 and 3170 of the Mississippi Code of 1942. He said there were only 12 Negroes registered to vote in Clay County in August of 1955 and he knew of only one Negro challenged during the two primaries in 1955, and this Negro did not vote after being told his vote would be challenged.

[fol. 886] Lowndes Co. #32

In Lowndes County Negroes voted without incident in the August 2, 1955 primary but all the Negroes who attempted to vote in the August 23, 1955 primary were challenged. The circumstances and locations of the places where these challenges occurred and the reasons for these challenges are listed below.

44000	Aug. 23, 1955 Poll official at College Precinct Columbus	His ballot was challenged by a white man named Harris on the grounds that he was not a member of the Democratic Party. It was placed in an envelope by poll officials with a slip of paper Harris gave him stating the grounds for challenge on nonmembership in the Democratic Party. His wife accompanied him and was similarly treated.
44001	8/25/55 Columbus	Went to Bell Lumber Company Precinct to vote with her husband James L. Allen; White man named Harris challenged their votes on grounds they were not members of Democratic Party; ballot was placed in envelope with a challenge slip.
44002	8-23-55 A poll official at Bell Lmbr Precinct Columbus	His ballot was placed in an envelope, rather than the ballot box, by a lady official. There was a yellow slip of paper in the envelope.
44006	August 23, 1955 Poll official at Community Center Columbus	Went with his wife. As he was to put his ballot in the box, a young white man stepped up to him and said he challenged his vote. His ballot was put in an envelope and he thinks his name was written on the envelope.
44007	August 23, 1955 Poll official at Bell Lmbr. Co. Columbus	A lady official took his ballot as he was putting it in the box, told him it had been challenged and placed it in an envelope.

[fol. 887]

44009	8-23-55 Poll official at College Precinct Columbus	His vote was challenged by a white man because he was not a member of the Democratic Party. His ballot was placed in an envelope rather than the ballot box. The paper with the challenge was placed in it. He went to vote with his wife Lucille Brewer.
44010	Aug. 23 1955 Poll Official at College Precinct Columbus	She went to vote with her husband, Jack Brewer. Her ballot was challenged by Dr. John Olliver because she was not a member of the Democratic Party. It and a paper with the challenge were taken by a poll official and placed in an envelope rather than the ballot box. Mrs. Bush, a poll official, Mr. Watson, the bailiff and Ida Harris, another Negro, were identified as being present.

44017	Aug. 23 1955 Poll official at Bell Lmbr. Co. Columbus	She gave her ballot to a lady sitting by the ballot box. A white man gave the lady a yellow slip which the lady put with the ballot in an envelope.
44073	Aug. 23, 1955 Official at Community Center Poll Columbus	She was given a ballot; after she marked it but before she put it in the ballot box an unknown white male gave her a yellow slip of paper which she took to be a challenge. Her ballot was placed in an envelope with the yellow piece of paper.
44019	Aug. 23, 1955 Poll official at Bell Lmber. Co. Columbus	The white lady official took his ballot and placed it with a yellow piece of paper in an envelope. Wrote something on the envelope and put it with others. He appealed this action with Professor Robert E. Hunt and Mrs. Hunt to a committee.
44020	Aug. 23, 1955 Poll official at Bell Lmbr. Co. Precinct. Columbus	His ballot was placed in an envelope by the poll official rather than in the ballot box.

[fol. 888]

44021	Aug. 23, 1955 Poll Official at Bell Lmbr. Co: Columbus	Her ballot was not placed in the box but was taken by an election official and placed in an envelope which was placed on the table.
44022	Aug. 23, 1955 Poll official at Bell Lmbr. Co. Columbus	Went to vote with Lemon Dickerson, Rev. Saulsberry, Sadye, Guyton, Ellen Magby, Nannie Ree Gordon. Her ballot was put in a white envelope by the lady official.
44023	Aug. 23, 1955 Official at College Precinct Columbus	Her ballot was challenged by an unidentified white male because she was not a member of the Democratic Party. It was taken by the poll official and placed in an envelope. With her ballot was a slip of paper given to her by the man.
44024	Aug. 23. 1955 Poll official at Bell Lmbr. Co. Columbus	Her ballot was taken by the poll official and placed in an envelope. She observed this was not done to ballots cast by whites.
44025	Aug. 23, 1955 Poll officials at Bell Lmbr. Co. Precinct Columbus	His ballot was placed in an envelope which contained a piece of colored paper by the poll official. He observed that ballots cast by white people went into the ballot box.
44026	Aug. 23, 1956 Poll officials at Bell Lumber Precinct Columbus	His form was placed in an envelope with a yellow piece of paper in it by the poll official. He observed this was not done to ballots cast by whites. He was told by a lady official that his ballot would be counted.

[fol. 889]

44027	8-23-55 Poll official at Bell Lmbr. Co. Precinct Columbus	His ballot was placed in an envelope rather than in the ballot box. The envelope was placed on the table with other white envelopes. He observed this was not true of whites.

44028	Aug. 23, 1955 Lady official at Bell Lmbr. Co.	Her marked ballot was taken by the lady official and placed in a white envelope rather than in the ballot box.
44029	Aug. 23, 1955 Poll official at Bell Lmbr. Co. Columbus	She gave her marked ballot to the lady who gave it to a white man who wrapped it in a yellow piece of paper and put it in an envelope. The envelope was placed on a table.
44030	8-23-55 Poll official at Bell Lmbr. Co. Precinct Columbus	He went to vote with his wife Susie. He was given a ballot, marked it in a booth and started to give it to the person at the ballot box. An unidentified white male challenged this ballot. His ballot was taken by an official and placed in an envelope with a slip of yellow paper. The envelope was sealed, his name was written on it and it was placed on a table rather than in the box. The same thing happened to his wife.
44031	Aug. 23, 1955 Columbus	Accompanied by Nannie Ree Gordon, Helen Dickman, Ellen Magby, John Dickerson, L. C. Erby and the Reverend Mr. Saulsberry, she went to vote. Her marked ballot was placed by the lady official in a white envelope which already had a yellow slip of paper in it. This was done to all those persons with her except Rev. Saulsberry who when he observed what was happening put his ballot in his pocket.

[fol. 890]

44032	Aug. 23, 1955 Poll official College Precinct Columbus	Her ballot was challenged by a white lady working at the polls because she was not a member of the Democratic Party. The poll official took the ballot and a yellow slip of paper with the challenge written on it and put them in an envelope rather than in the box.
44033	Aug. 23, 1955 Official at Bell Lmbr. Co. Columbus	Accompanied by Augusta Whendon. She marked her ballot and it was placed in a white envelope by a white lady. The envelope was placed on the table with a group of other envelopes.
44034	Aug. 23, 1955 Democratic Executive Committee Columbus, Precinct Columbus	He appeared before the committee. He was informed his ballot was challenged on these grounds: (1) He was not a member of the Democratic Party; (2) he did not believe in states rights; (3) something about loyalty or patriotism. He answered the challenge but was informed later by Circuit Clerk Cockrhan that his ballot was not counted.
44034	Aug. 23, 1955 Poll official at Bell Lmbr. Co. Columbus	The ballots of his wife and himself were placed in separate envelopes by the lady sitting at the table and their envelope was placed with similar envelopes.
44040	Aug. 23, 1955 Poll official at College Precinct Columbus	The poll official placed her ballot in an envelope after it was challenged by a white man, unknown to her, on the grounds that she was a member of the Democratic Party. She determined the basis of the challenge by reading a yellow slip of paper he handed her. The slip was placed in the envelope with her ballot.

44041	Aug. 23, 1955 Official at Bell Lmbr. Co. Poll Columbus	Accompanied by Sadye M. Guyton, Nannie Bee Gordon and others, she attempted to vote. Her ballot was placed in a white envelope after she handed it to the poll official. This happened to those accompanying her.
44042	Aug. 23, 1955 Poll official at Bell Lmbr. Co. Columbus	He saw his ballot put in a white envelope.

[fol. 891]

44043	Aug. 23, 1955 Poll official at College Precinct Columbus	Her ballot was challenged by the poll official giving her a slip of paper with her ballot on the grounds that she was not a member of the Democratic Party. It was taken and put in an envelope by the poll official.
44044	Aug. 23, 1955 Poll official at College Columbus	Her ballot was challenged by an unknown white male on the grounds that she was not a member of the Democratic Party. It was then placed in an envelope by the poll official. Also present was Maggie M. Moore, Ida Dixon and Veneta Logan, all Negroes.
44052	Aug. 23, 1955 Poll official at Bell Lmbr. Co. Columbus	When he saw other Negroes ballots being challenged he put his ballot in his pocket and left.
44054	Aug. 23, 1955 Poll official at Bell Lmbr. Co. Poll Columbus	After she and her husband voted, their ballots were placed in separate white envelopes which appeared to have another slip of paper in them. The lady official wrote each of their names on the appropriate envelope.
44055	Aug. 23, 1955 Poll official at Bell Lmbr. Co. Columbus	He and his wife's ballots were taken by a lady official, placed in an envelope and put on the table. Each of their names were written on the appropriate envelope.
44058	Aug. 23, 1955 Poll official at Bell Lmbr. Co. Precinct Columbus	His ballot was placed in an envelope, rather than in the ballot box, by the poll official. He observed this was not the case with white voters.
44059	Aug. 23, 1955 Poll official at Bell Lumbr. Co. Precinct Columbus	Her ballot was placed in an envelope by the poll official. This was not done to ballots cast by white persons.

[fol. 892]

44060	Aug. 23, 1955 Poll official at Bell Lmbr. Co. Columbus	She went with friends to vote. Her ballot was taken by the lady, placed in a white envelope and put on the table with others.
44061	Aug. 23, 1955 Official at Bell Lmbr. Co. Poll Columbus	Went with her husband. His ballot was taken by an official and put in a white envelope then put on a table.

44062	Aug. 23, 1955 Official at Bell Lmbr. Co. Poll Columbus	Accompanied by his wife. His ballot was placed with a yellow or pink slip of paper which a white man gave the lady sitting at the box into a white envelope. The envelope was put on the table.
44065	Aug. 23, 1955 Official at Bell Lmbr. Co. Poll Columbus	Accompanied by Melissa Harrison. Her ballot was taken by a white lady by the ballot box and placed in an envelope. The envelope was placed in a pile with other similar envelopes.
44067	Aug. 23, 1955 Poll official at Bell Lmbr. Co. Columbus	His ballot was taken by a white lady, placed in an envelope in which seemed to be a yellow slip of paper.

[fol. 893] Claiborne County #39

The following Negro registered voters in Claiborne County were not permitted to vote in primary elections in Claiborne County on the grounds that Negroes were not in harmony with the principles of the Democratic Party of the State of Mississippi. Negro registered voters also experienced difficulties and denials when they attempted to vote in general elections in Claiborne County. These denials continued until the Congressional election primary on June 5, 1962. These denials occurred at the places noted in Claiborne County.

11036	Aug. 1955 McFatter, Russell, Jordan, Port Gibson	They went to the Town Clerk's office to vote. Mr. McFatter said they were not Mississippi Democrats, that they would have to subscribe to the state's belief in state's rights and separation of the races, and that if they did so swear, they might be subject to prosecution for perjury. They left without voting.
11035	Aug. 1955 McFatter, Russell, Jordan, Port Gibson	When they went to the polls to vote, one official said they were not Mississippi Democrats and that they would have to sign a statement affirming their support of states' rights, separation of the races and the Mississippi Constitution. They would not do this and were not permitted to vote.
11024	Aug. 1955 Mann and 2 other white men Pattison	When he presented himself to vote, Shelby Mann asked him several questions including whether or not he believed in fair employment practices. When he said that he did, Mann said that disqualified him since the state Democratic Party did not.

[fol. 894]

11019	About Aug. 1955 Fox Hermanville	He went to the polls and asked for a ballot. Russell Fox challenged his vote, saying he knew Mr. Jones wasn't in harmony with the Democratic Party because of his being President of the NAACP.

11034	About Aug. 1955 White Man Port Gibson	An election official said Rev. Spencer was not a member of the Mississippi Democratic Party, and could not join without signing an affidavit saying he was not a member of the NAACP. The official also said he would bring perjury charges against him if he did sign the affidavit. He did not sign and he did not vote.
11014	About Aug. 1955 White Man Port Gibson	She went to City Hall to vote. A white man there asked if she was a member of the NAACP. She said she was, and he said there was no way in the world for her to qualify to vote.
11004	1955 or 1956 Hasting Allen and A White Man Port Gibson	When he and his wife, both registered voters, presented themselves at the polls, he was asked if he knew the Constitution and then to sign an affidavit about membership in integrated organizations. He was told that if he did sign and was a member of such an organization, he would be prosecuted for perjury. Then he was told that they'd keep the vote in a sealed envelope until they checked his memberships and that they'd get the law after him if he belonged to any. He and his wife left without voting.
11029	About Nov. 1956 Rush Hermanville	He was told he could not vote because his name was not on the list they had at the polls.

[fol. 895]

11015	About Nov. 1956 White Man Port Gibson	He went to City Hall alone to vote. One of the officials at the polls said he would have to wait until an officer came. He did not say what officer. He waited for an hour and no-one had told him he could vote—so he left.
11026	About 1956 Fox, Mann, Rogers, Pattison	He and another Negro, Floyd Rollins, attempted to vote in the Democratic Primary. They were told they could not vote because they were not members of the Democratic Party.
11025	Mid 1950's Mann, Pattison	Went to polls with several other Negroes. Shelby Mann said Negroes couldn't vote, that there were too many of them and if they all voted, they would take over.
11025	Mid 1950's Mann, Fox, Jones, Pattison	Went to polls with several other Negroes. They were told they couldn't vote without filling out a form about organizations they belonged to and promising to support the Democratic Party.
11025	Mid 1950's Mann, Pattison	Went with four other Negroes to vote in the primary. Shelby Mann said they couldn't vote in the primary, that they would have a meeting and let them vote as they saw fit.
11032	Mid 1950's Mann, Fox	He went to the polls and told Mann he wanted to vote. Mann asked him a number of questions and then told him he was not a qualified voter.
11031	Mid or late 1950's Fox, Mann, Pattison	Rep. Fox questioned him about his beliefs on fair employment practices and segregation and then refused to let him vote.

11019	Between 1956 and 1960 Unknown Hermanville	Went to polls with wife but were told they could not vote.

[fol. 896]

11019	Between 1956 and 1960 White Person Hermanville	He and his wife went to the polls to vote, but they were not permitted to. A white person at the polls told him his name was not in the precinct book.
11017	Mid 1950's White Man Port Gibson	He and another Negro man went to the polls to vote, but a white man named Russell (Fox) who was there said they could not vote.
11023	Aug. 1959 Hastings, Fox, Gage, III, Vaughan Port Gibson	Mr. Hastings challenged his vote when he went to the polls. Dr. Morris was brought before a committee which questioned him about his views on civil rights and state's rights, et al. Rep. Fox informed him that he was under oath and subject to the laws of perjury. Mr. Hastings then told him that he could vote only by placing his ballot in an envelope along with other challenged ballots. Dr. Morris left.
11029	Aug. 1959 Galloway, Justice of the Peace, Slaughter, Hayes Hermanville	Galloway challenged his vote, saying he was a Republican despite Patton's stating he was a Democrat.
11024	1959 Mann, Pattison	He went to the polls to vote, but Shelby Mann said his name was not on the voting list and refused to permit him to vote.
11031	About Aug. 1960 Mann, Pattison	Mann told him he could only vote on a Constitutional Amendment, nothing else. Mann said there were questions he would have to ask him to see if he was really a Democrat but that he would have to go to Port Gibson to get them and then ask him in the afternoon.

[fol. 897]

11019	Nov. 1960 Justice of the Peace, Slaughter Hermanville	Went to polls with wife and both voted, but Justice of Peace wrote his name on both their ballots.
11024	Nov. 1960 Mann Pattison	He presented himself at the polls, but Shelby Mann said his name was not on the voting list and declined to permit him to vote.
11029	Nov. 1960 Hermanville	The ballot he was given and cast at this election had the Justice of the Peace's initials on it.

[fol. 898] **Simpson County #57**

The following Negro citizens of Simpson County were not permitted to vote in elections in Simpson County.

64006	8/2/55 Mendenhall	Went to vote and was prevented from doing so because name not in poll book. Was exempt because of age from payment of poll tax.
64007	8/2/55 Mendenhall	Went to vote in primary. Was prevented from doing so because name not in poll books. Was told this was so because poll tax receipts were from two different precincts.
64010	8/2/55 Mendenhall	Went to vote in primary. Was prohibited because name not in poll book. Was told name was omitted because poll tax receipts were from two different precincts.
64011	8/2/55	Went to vote in primary. Was denied right to vote because name not in poll book. Had poll tax receipts. Explanation offered was that receipts listed two different addresses.
64029	8/23/55 Mendenhall	Was challenged when attempted to vote in primary. Was allowed to vote but believe his ballot was kept separated from other ballots.
64012	1955 or 1956 Martinsville	Went to vote in an election. At polling place, a white person advised him that if he voted someone would make trouble. Didn't vote. Has never voted.
64014	1955 or 1956 Martinsville	Went to vote and was told by white person at polling place, 'They are waiting for you in there. There is going to be trouble." Did not vote. Has voted in all other elections.
64001	1956 Martinsville	Went with 3 others to vote. Was told that he had better not try to enter polling place. He did not try to vote.

[fol. 899]

64002	1956 Saratoga, Eubank, Sullivan	Went with wife to vote. Was told outside poll place, by white man, Mr. Buck Eubank, that he had better not go inside. Also advised not to vote by Mr. Mel Sullivan. Did not attempt to enter polling place.
64003	1956 Saratoga, Eubank	Went with husband to vote. Was prevented from doing so by white man, Buck Eubank, who told her and her husband not to enter polling place.
64004	1959 Martinsville	Went to vote with husband in Gubernatorial election. An unknown white man told her not to vote. She left.
64024	Nov. 1956 Saratoga, Jones	Was told by Mr. Joseph Jones who was in charge of polls that he could not vote because he was listed as "white" on the list of qualified voters.

64026	Nov. 1957 Saratoga, Eubank	Went to vote and was told that Negro votes were not being taken. Told this by Mr. Buck Eubank.
64026	Nov. 1960 Saratoga, Sullivan	Went to vote and was told Negro votes were not being taken. Told this by Mr. Mel Sullivan.

[fol. 900] Noxubee County #65

The following Negro citizen of Noxubee County was not permitted to vote in Noxubee County.

52004	11/6/56 Mrs. Morris	Not permitted to deposit ballot for general election in ballot box.

[fol. 901] Statements in United States Senate Committee Hearing.

In 1946 a special investigation of the campaign of Theodore G. Bilbo, United States Senator for Mississippi, was conducted by the Senate Special Committee on Campaign Expenditures, 1946 United States Senate, Seventy-Ninth Congress. The following quotations are statements made by witnesses to the Special Committee.

Mr. Clifford R. Field, Circuit Court Clerk of Adams County, testified:[1]

> The Chairman: What other restrictions did you place on the colored applying to register, in contrast to the whites, other than the requirement as to the production of the poll-tax receipt?
>
> Mr. Field: The only other thing I did was to ask them to read the section of the constitution of the State of Mississippi where it explains the election of the Governor of the State of Mississippi. I did not require that of the whites, but I did require it of the colored.
>
> The Chairman: Why did you make the exception?
>
> Mr. Fields: I didn't require it, that is, I have no other reason than that they were colored.

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[1] WS-1 *Hearings before the Special Committee to Investigate Senatorial Campaign Expenditures, 1946.* United States Senate, Seventy-Ninth Congress, Second Session. (Washington, D. C.: Government Printing Office, 1947), p. 205.

Mr. C. E. Cocke, of Washington County, who was in 1946 and still is the Circuit Court Clerk of Washington County, testified:[2]

[fol. 902] Mr. Wyman (Counsel for the Committee): Did you ask any of these individuals (Negroes) whether they could read, prior to the time you questioned them?

Mr. Cocke: I did.

Mr. Wyman: And did they satisfy the requirements of being able to read?

Mr. Cocke: They said that they could.

Mr. Wyman: But after that you questioned them?

Mr. Cocke: I did.

Mr. Wyman: Do you remember, Mr. Cocke, ever having made a statement that no matter how they answered these questions, that they were disqualified?

Mr. Cocke: I think I told them in short words that they would have a hard time convincing me, I believe I made that statement.

The Negroes were not allowed to register to vote in Mississippi is illustrated by the testimony of Negroes in the hearings. Nathaniel H. Lewis of Pike County, Mississippi, testified that on June 14, 1962, he, with four other Negroes, tried to register to vote:[3]

> . . . . and then he asked me who was the President of the United States and who was the Vice President of the United States, who was the Secretary of State, and who was the Secretary of Labor, and how was the President of the United States elected, and how was the Secretary of State elected, and how was the Governor of Mississippi elected, and he wanted to know what was on the

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[2] WS-2 *Hearings Before the Special Committee to Investigate Senatorial Campaign Expenditures, 1946.* p. 178.

[3] WS-3. *Hearings Before the Special Committee to Investigate Senatorial Campaign Expenditures, 1946.*

ballot, and after a little he says, 'Lewis, you go brush up on your civics and come back' . . . .

Senator Bridges (Styles Bridges of New Hampshire); The questions that he asked you, how many of them did you answer correctly, do you think?

[fol. 903] **Mr. Lewis: All of them but one, to be sure.**

Senator Bridges: Which one was that?
Mr. Lewis: He asked me what was on the ballot.

Four other Negroes, two from Walthall County and two from Pike County, also testified that they were asked similar questions by the circuit clerks when they tried to register.[4]

The refusal to permit Negroes to register to vote was often much less sophisticated. Five Negroes—one from Walthall, Hinds, Franklin and Winston Counties—testified that when they went to try to register in their respective counties they were simply not permitted to do so.[5]

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[4] WS-4-WS-7. Testimony of Samuel B. O'Neal, Pike County, Mississippi, *Hearings Before the Special Committee to Investigate Senatorial Campaign Expenditures, 1946*, pp. 140-141; testimony of Napoleon B. Lewis, Pike County, Mississippi, *Hearings Before the Special Committee to Investigate Senatorial Campaign Expenditures, 1946*, pp. 120-121; testimony of Venton Simmons, Walthall County, Mississippi, *Hearings Before the Special Committee to Investigate Senatorial Campaign Expenditures, 1946*, pp. 279-280; testimony of Timothy Dillon, Walthall County, Mississippi, *Hearings Before the Special Committee to Investigate Senatorial Campaign Expenditures, 1946*, pp. 281-282.

[5] WS-8-WS-12. Testimony of A. G. Price, Walthall County, Mississippi, *Hearings Before the Special Committee to Investigate Senatorial Campaign Expenditures, 1946*, pp. 225-226; testimony of J.B. Raiford, Walthall County, Mississippi, *Hearings Before the Special Committee to Investigate Senatorial Campaign Expenditures, 1946*, pp. 283-284; testimony of Willis D. Hamm, Marshall County, Mississippi, *Hearings Before the Special Committee to Investigate Sena-*

[fol. 904] One of them, Ezell Singleton, Branton, Mississippi, testified:[6]

> I don't know exactly the date, but it was in June that I went up to the circuit clerk's office at Brandon, and I told her I wanted to register, and she told me to go upstairs and turn short to the left, and there was a man up there to take care of all veterans. So I went up there, and I asked the gentleman in the office there, I told him I wanted to register, and he told me to sit down, and he talked with me awhile and then he asked me who sent me up there, and I told him I came on my own hook, and he got up from behind his desk, and started toward me, and I stood up, and he stopped, and he told me if I didn't want to get into serious trouble for me to get out of his office. So I did.

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torial Campaign Expenditures, 1946, pp. 317-320; testimony of Ezell Singleton, Franklin County, Mississippi, *Hearings Before the Special Committee to Investigate Senatorial Campaign Expenditures, 1946,* pp. 124-125; testimony of Cleavis Gladney, Winston County, Mississippi, *Hearings Before the Special Committee to Investigate Senatorial Campaign Expenditures, 1946,* pp. 213-215.

[6] WS-13. *Hearings Before the Special Committee to Investigate Senatorial Campaign Expenditures, 1946,* p. 124.

[fol. 905] **V. Statements By Mississippi Government Officials**

The following statement reported in the *Daily Clarion-Ledger*, July 11, was made in 1907 by John Sharp Williams, candidate for Senator of the United States from Mississippi. He subsequently won the election:[1]

> **Instead of disfranchising the negro as we now do to such an extent that Governor Vardaman and I in running for office today and other men in running for office are paying no more attention to the negroes in Mississippi than they are to the mules tied up by those negroes. Instead of disfranchising the negroes by words of circumvention as we do I would like to be able to read in plain words upon the constitution of the state of Mississippi the electoral franchise in this state shall be exercised by all persons 21 years of age of pure white blood.**

His opposing candidate, Governor James Vardaman, made the following statement in the same year; according to the April 27 issue of *The Saturday Evening Post*:[2]

> The Negro should never have been trusted with the ballot. He is different from the white man. He is congenitally unqualified to exercise the most responsible duty of citizenship. He is physically, mentally, morally, racially and eternally the white man's inferior. There is nothing in the history of his race, nothing in his achievements of the past nor his promise for the future which entitles him to stand side by side with the white man at the ballot-box.
>
> This inestimable privilege was thrust upon the negro snatching him out of his twenty thousand barbaric years and placing him shoulder to shoulder with the heir of

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[1] WS-14. The *Daily Clarion-Ledger. Jackson, Mississippi.* July 11, 1907, p. 6.

[2] WS-15. Quoted by Harris Dickson in "The Vardaman Idea," *The Saturday Evening Post,* Vol. 179, No. 43, April 27, 1907.

all the ages. This was a stupendous blunder, worse than any crime, and the sober second thought of the nation should correct it.

[fol. 906] We must repeal the Fifteenth and modify the Fourteenth Amendment to the Constitution of the United States. Then we shall be able in our legislation to recognize the negro's racial peculiarities, and make laws to fit them. This would leave the matter precisely as was intended by the fathers of the Republic.

During the peak of this same campaign for election to the United States Senate, John Sharp Williams spoke about his own views and those of his opponent, James Vardaman:[3]

Now, ladies and gentlemen, it seems to me curious that any man in the state of Mississippi could ever have imagined even that there could be any issue between the gentleman from LeFlore County and myself upon the question of the desirability of white political supremacy and undesirability of black political domination. (applause) I dare say there is not in this audience a man fool enough to believe that there can be any issue between him and a Yazoo County white line red shirt Democrat upon that question.

The gentleman tells you that there, the white man must rule and must rule by law. My reply is that the white man is ruling and is ruling by law. The federal judges and not Governor Vardaman or myself, the Supreme Court of the United States have issued this opinion to the world.

He tells you that the negro ought to have nothing to do with politics, and that the negro has no right which the white man must be bound to respect as far as politics go. Does he imagine that this is a novel and new sentiment to a man of my political service, to a man of my environment, or to any of you?

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[3] WS-16. The *Daily Clarion-Ledger*, July 4, 1907.

[fol. 907] In 1914, Vardaman, who was then United States Senator, said on the floor of the Senate, according to the *Congressional Record of the Senate of the United States*:[4]

> As Governor of my State I am sure I exerted myself as much to protect the negro in the enjoyment of his life, his liberty, the pursuit of happiness, and the products of his own toil as any executive in America has ever done. He does not vote much in Mississippi, but I really think he votes more than he ought to vote, if he votes at all. I do not think it was ever intended by the creator that the two races should live together upon equal terms—enjoy equal political and social advantages. One or the other must rule.

In his campaign for re-election in 1946, Senator Theodore Bilbo, the senior senator from Mississippi, urged the circuit clerks to disqualify Negro applicants by the use of the interpretation test.[5]

> The poll tax has nothing to do with the negro not voting in the State; the real thorn in their imaginary crown—placed there by the Negro lovers of the north—is section 244 of the State's Constitution, which provides that before anyone can register he must be able to read, or explain after it is read to him or her, the provisions of this Constitution. The circuit clerks are under oath to protect the provisions of that Constitution, and if there is a single man or woman serving in this important office who cannot think up questions enough to disqualify 'undesirables' then write Bilbo or any good lawyer and there are a hundred good questions which can be furnished.

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[4] WS-17. *Congressional Record of the Senate of the United States*, Sixty-third Congress, Second Session, Vol. 51.

[5] WS-18. The *Jackson Daily News*. Jackson, Mississippi, May 28, 1946. Verified by Senator Bilbo in testimony during *Hearings Before the Special Committee to Investigate Senatorial Campaign Expenditures*, 1946, Seventy-Ninth Congress, Second Session, p. 348.

During the same campaign, Senator Bilbo said:[6]

> The poll tax won't keep 'em from voting. What keeps 'em from voting is section 244 of the constitution of 1890, that Senator George wrote. It says that a man to register must be able to read and explain the Constitution when read to him. . . . And then Senator George wrote a constitution that damn few white men and no niggers at all can explain . . .

[fol. 908] Mississippi Newspaper Comment

The decline in Negro registration in the State was recognized as early as 1903. The *Clarion-Ledger* of July 16, 1903 report that:[7]

> The probable total registration of the state today including those who have registered for the August primary is in the neighborhood of 100,000 of which none exceeding 20,000 are colored. Despite the oft-expressed fear that the Negro is trying to get back into politics no information of this kind is shown on the registration book, a very small number qualifying for citizenship who are really entitled to do so. County registrars have kept the Negroes off the books by strict enforcement of the understanding clause in the Constitution.

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[6] WS-19. Quoted by Harry Henderson and Sam Shaw in *Colliers*. July 6, 1946. Verified by Senator Bilbo in testimony during *Hearings Before the Special Committee to Investigate Senatorial Campaign Expenditures*, 1946, p. 205.

[7] WS-20. The *Clarion-Ledger*. July 16, 1903, p. 8.

[fol. 909] ANSWER TO INTERROGATORY NUMBER 10(a) AS TO THE FACTUAL BASIS FOR THE ASSERTION CONTAINED IN PARAGRAPH 27 OF THE COMPLAINT THAT THE PROPOSED AMENDMENT TO SECTION 244 OF THE MISSISSIPPI CONSTITUTION OF 1890 WAS DESIGNED TO PERPETUATE IN MISSISSIPPI "WHITE POLITICAL SUPREMACY," A RACIALLY SEGREGATED SOCIETY, AND THE DISFRANCHISEMENT OF NEGROES.

The factual basis for the assertion contained in Paragraph 27 of the complaint that the proposed amendment to Section 244 of the Mississippi Constitution of 1890 was designed to perpetuate in Mississippi "white political supremacy," a racially segregated society, and the disfranchisement of Negroes is as follows:

1. In June 1951, the United States Court of Appeals for the Fifth Circuit made it clear that the interpretation portion of section 244 could not be used as a registration requirement where the applicant could read.[1]

2. In 1952 the Mississippi Legislature passed a joint resolution proposing an amendment to Section 244 of the Mississippi Constitution of 1890 which provided that as a prerequisite for registration to vote the applicant must be able both to read and to give a reasonable interpretation of any section of the Mississippi Constitution.[2] The proposed amendment was submitted to the voters in a general election and was not adopted.[3]

[fol. 910] 3. In its next regular session on April 24, 1954, the Legislature, again adopted a similar resolution to amend Section 244.[4] The proposed amendment required that an applicant for registration be able to read and write any section of the Mississippi Constitution and give a reasonable interpretation thereof to the county registrar and, in addition, that the applicant be able to demonstrate to the county registrar a reasonable understanding of the duties and

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[1] *Peay* v. *Cox*, 190 F 2d 123, (Fifth Cir., 1951).

[2] P. 54-1, Mississippi Laws, 1952, Ch. 454.

[3] A-54, Defendant's admission in Answer to Complaint on behalf of the State of Mississippi p. 5, par. 24.

[4] P. 54-2. Mississippi Laws, 1954, Ch. 427.

obligations of citizenship under a constitutional form of government.[5] The proposed amendment also required for the first time in Mississippi that persons applying for registration must make a sworn written application for registration on a form to be prescribed by the State Board of Election Commissioners.[6] Persons who were registered to vote prior to January 1, 1954, were expressly exempted from the new, more stringent requirements.[7]

4. On May 1, 1954, the Mississippi Legislature created a twenty-five member Legal Education Advisory Committee.[8]

5. According to the *Clarion-Ledger* of August 1, 1954, in July, the Legal Educational Advisory Committee, together with Governor Hugh White, met with a group of Mississippi Negro leaders to discuss preserving a voluntary [fol. 911] equal but separate public school system in Mississippi. The Negroes rejected the proposal and as a result Governor White called "for an extraordinary session of the Legislature to convene on September 7 to consider submitting to the people a constitutional amendment empowering the Legislature, by two-thirds vote of both houses, to abolish the public schools, or to authorize counties and separate school districts to abolish the schools if efforts are not to force integration of the races in the schools and this becomes the last resort to prevent integration." [9]

6. On August 13, 1954, according to the *Clarion-Ledger* of that date Governor White expressed the view that: [10]

> There is no thought among the Advisory Committee to abolish the public schools. . . . But the constitutional amendment must be passed as a weapon to hold over Negro heads to keep them from trying to force integrated schools upon Mississippi.

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[5] P. 54-2. Mississippi Laws, 1954, Ch. 427.

[6] P. 54-2. Mississippi Laws, 1954, Ch. 427.

[7] P. 54-2. Mississippi Laws, 1954, Ch. 427.

[8] P. 54-3. Mississippi Laws, 1954, Ch. 420.

[9] P. 54.6. The *Clarion-Ledger*: Jackson, Miss. August 1, 1954. P. 16, col. 2.

[10] P. 54-7. The *Clarion-Ledger*, Jackson, Miss. August 13, 1954. P. 1.

7. During the same summer, 1954, white citizens councils were formed in Mississippi. The purpose of these organizations was the maintenance of racial segregation in the state.[11]

In a circular of the Association of Citizens Councils of Mississippi, which sets forth the committees to be formed [fol. 912] in local citizens councils, the duties of each committee are stated:[12]

1. *Political and Elections Committee*—Screens all candidates in local and state elections against those who might be seeking the negro vote. If necessary, organize a white private election, within our group, to combat the negro bloc vote (as our old white primary). Discourage negro registration by every legal means.
2. *Information and Education Committee*—Gather information pertaining to segregation from all over our nation. Seek facts to present to our people. Educate all citizens, black and white, to the advantages of segregation and the dangers of integration. Handle press, radio and speakers. Coordinate with other similar organizations.
3. *Membership and Finance Committee*—Seeks white patriotic voters for membership. We must mobilize public opinion.
4. *Legal Advisory Committee*—Anticipates moves by agitators and devises legal means for handling any problem that may arise. Provides legal council for all members.

We will be in a position to support any national organization that we feel sanctions our ideals. If all eighty-two counties in Mississippi and the South were to organize, as we are doing, *what would our possibilities be?*

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[11] P. 54-17. Robert B. Patterson. *The Citizen's Council Annual Report.* (Winona, Mississippi: Association of Citizens' Councils of Mississippi, 1955), p. 1.

[12] P. 54-18. "What is the Citizens' Council?" (Winona, Miss.: Association of Citizens' Councils of Mississippi, 1954).

8. An extraordinary sessions of the Mississippi Legislature convened September 9, 1954.[13]

9. In September 1954, the Legal Education Advisory Committee of the Mississippi Legislature submitted its statement of policy:[14]

> [fol. 913] The Committee conceives its duty to be to devise the means and methods by which separate schools for the race shall be maintained in this state and to submit such plan to the legislature for its action thereon.
>
> It was the sense of the committee that its first most important task is to determine what amendments to the state constitution are necessary to enable the legislature to effectively deal with the problem of segregation and integration in the public schools brought about by the decision of the Supreme Court of the United States of May 17, 1954, declaring that the doctrine of separate but equal facilities has no place in the education system of the nation, and that separate schools for the white and colored races based solely on race is in violation of the Fourteenth Amendment to the Constitution of the United States, therefore when a state undertakes to furnish education opportunities to its citizens [they] must be furnished to all regardless of race or color and without discrimination, thus abolishing our present school system set up under Section 207 of the constitution which provides: "separate schools shall be maintained for children of the white and colored races."

10. In September 1954, the Legislature adopted the resolution proposing a constitutional amendment to empower the Legislature to abolish the public schools or to authorize counties and separate school districts to abolish the schools.[15]

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[13] P. 54-19. *Journal of the Senate of the State of Mississippi, Extraordinary Session*, 1954, p. 3.

[14] P. 54-20. *Journal of the House of Representatives of the State of Mississippi, Extraordinary Session*, 1954, p. 14.

[15] P. 54-4. Mississippi Laws, 1954. Ex. Ch. 39.

11. On September 13, 1954, the work of the Citizens' Councils of Mississippi was acknowledged on the floor of the Mississippi House of Representatives. Mrs. Wilma B. Sledge, of Sunflower County, where the Citizens, Council was founded, stated:[16]

> [fol. 914] The Citizens' Councils are a wide-spread group of local organizations composed of reliable white male citizens who believe that segregation is not discrimination and are organized for the sole purpose of maintaining segregation of the races. These councils will maintain segregation through unity and purpose, consolidation of public opinion, and utilization of all legal means available.
>
> Each council accepts the responsibility of preventing integregation of the races within its immediate territory. Should a consolidation of councils be necessary for concerted action, a centralized state control could be established within a matter of hours. This is true despite the fact that the combined membership has grown within the past two months to the extent that it is now numbered by the thousands.
>
> All segregation problems confronting the respective councils are thoroughly studied by appropriate committees, and any action recommended have the complete sanction of legal advisors who are also members of the organization.
>
> . . . In maintaining segregation, all city, county and state officials will receive complete support from their councils. Our Congressmen will receive like support.
>
> All of Mississippi's law enforcement officers will be given any assistance they request.
>
> Agitation promoted or fomented by out-of-state individuals and organizations will be nullified.
>
> Candidates for offices at all levels will be carefully screened by the political committees.
>
> . . . They (the councils) seek to educate all citizens,

[16] P. 54-21. *Journal of the House of Representatives of the State of Mississippi, Extraordinary Session,* 1954, pp. 47-49.

both black and white, to the advantages of segregation and the dangers of integration.

The spontaneous growth of the councils is indicative of the fact that they are predicated on law, order and decency for both races.

But segregation will be maintained.

[fol. 915] ... Every state in the South has been watching Mississippi. This is our decision and your pattern for the preservation of our way of life.

Ladies and Gentlemen, I am sure you agree with me that such motives and methods are laudable, timely, and imperative. They deserve the sanction and participation of all who are willing to mutually pledge their lives, their fortunes, and their honor to the preservation of an unsullied race. To falter would be tragic; to fail would be fatal. These will neither falter or fail.

12. Between October 28, 1954, and November 2, 1954, as indicated by newspaper reports, it was a matter of common knowledge throughout Mississippi that the purpose of the amendment to section 244 was to perpetuate the disfranchisement of Negroes. This fact was recognized by newspapers widely circulated and read in Mississippi.

The *Jackson Daily News* reported on October 28, 1954, a speech by Mr. Robert Patterson, Chairman of the Association of Citizens' Councils of Mississippi who stated:[17]

> The amendment is intended solely to limit Negro registration.

In the same newspaper on November 1, 1954, the following comment appears:[18]

> The amendment would raise voting requirements and its proponents admit it is designed to check the increasing number of Negro ballots.

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[17] P. 54-8. *Jackson Daily News*. Jackson, Miss. October 28, 1954.

[18] P. 54-9. *Jackson Daily News*. Jackson, Miss. November 1, 1954.

The *Clarion-Ledger* on November 7, 1954, quoted a pre-election editorial in the *Natchez Times* regarding the pro- [fol. 916] posed amendment to Section 244:[19]

> As for the "dictatorial" powers which would be granted the registrar, we cannot get overly excited. An elected official usually reflects the wishes of a majority of the electors and he carries out local customs as a means of political preservation.

On election day, November 2, 1954, at least two such explanations were made in the *Clarion-Ledger*, the morning paper. On page one appears:[20]

> And the second [the proposed amendment to section 244] tightened up voting requirements and discouraged if not prevented further qualification of negroes for voting.

On the fourth page Charles M. Hill stated in his political column:[21]

> However, there is a steady upturn of registration by negroes for the ballot. The constitutional amendment which appears on the ballot . . . is supposed to be a guard against that.

13. On November 2 the amendment to Section 244 of the Mississippi Constitution was submitted to and ratified by the voters of the state.[22]

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[19] P. 54-10. The *Clarion-Ledger-Jackson Daily News*. Jackson, Miss. November 7, 1954.

[20] P. 54-11. The *Clarion-Ledger*. Jackson, Miss. November 2, 1954. P. 1.

[21] P. 54-12. The *Clarion Ledger*, Jackson, Miss. November 2, 1954. P. 4.

[22] P. 54-22. *Mississippi Official and Statistical Register*, 1950-1960. P. 392.

14. On November 3, 1954, the *Clarion Ledger* reported: [23]

> [fol. 917] With 347 precincts reporting the vote was 17,317 for the amendment to change the laws for qualification of voters to provide for reading and interpreting the state constitution as a requirement for the new registrants amendment is plainly aimed at negro voters and the provisions would not apply to those already qualified.

The *Meridian Star* reported the same day: [24]

> Slowly mounting returns today gave a 19 to 1 lead to a proposed amendment to restrict negro voting in Mississippi.

The *Gulfport Daily Herald* stated on November 4, 1954: [25]

> Mississippians will have to know how to read and write before they can register to vote under a constitutional amendment approved in Tuesday's general election.
>
> The amendment was aimed at placing new restrictions on Negro voters. Previously, the only restrictions was that applicants be able to read or understand the constitution when it was read to them.

The *Clarion-Ledger* also reported on November 4: [26]

> Mississippi voters defeated a similar amendment just two years ago. Reasons for the shift in public opinion, resulting in approval of the amendment Tuesday, are too well known to need discussion. Chief among the recent events and developments inspiring

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[23] P. 54-13. The *Clarion-Ledger*. Jackson, Miss. November 3, 1954. P. 1.

[24] P. 54-14. The *Meridian Star*. Meridian, Miss. November 3, 1954. P. 1.

[25] P. 54-15. The *Daily Herald*. Gulfport, Miss. November 4, 1954. P. 1.

[26] P. 54-16. The *Clarion-Ledger*. Jackson, Miss. November 4, 1954.

this shift of public opinion was the U. S. Supreme Court's decision outlawing segregation in the public schools even when equal facilities are provided.

We believe that under existing conditions and prospects our people were wise to approve this amendment. It should prove an effective weapon in the fight to retain segregation in and out of the schools.

[fol. 918] 15. On December 21, 1954, the people of Mississippi ratified the constitutional amendment which authorized the Legislature to abolish the public school system.[27]

16. In January 1955, another extraordinary session of the Mississippi Legislature was called for the purpose of inserting in the Constitution the amendment to section 244 and that the amendment to authorize abolition of the public schools. Both amendments were inserted during this session.[28]

17. In August, 1955 the annual report of the Citizens' Council stated in reference to the adoption and ratification of the two Constitutional amendments:[29]

The first major accomplishment by the first project undertaken by our Councils on a state level was the passage of the Constitutional Amendment to raise voter qualifications in Mississippi. Although this same amendment failed to pass in 1952, it passed by a tremendous majority when the people of Mississippi through the Citizens' Councils, were informed of the necessity and reason for the passage of this amendment. It is impossible to estimate the value of this amendment to future peace and domestic tranquility in this state.

Our next major effort was the school amendment. On December 21st of last year the people of Mississippi passed the amendment that gave the Legislature the power to abolish the public schools as a last resort in

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[27] P. 54-23. *Mississippi Official and Statistical Register*, 1956-1960. P. 397.

[28] P. 54-5. Mississippi Laws, 1955, Ex. Ch. 132, 133.

[29] P. 54-17. Robert B. Patterson. *The Citizens' Council Annual Report* (Winona, Mississippi: Association of Citizens' Councils of Mississippi, 1955), p. 1.

order to prevent racial integration in these schools. In passing this amendment we told the world in no uncertain terms that before we would submit to integration we would abolish our schools and set up state-supported private schools. Against organized opposition, [fol. 919] the Citizens' Councils threw their strength behind the passage of this bill. The Council officers felt that if integration came to Mississippi our schools would automatically be destroyed, and we felt that this amendment was merely a legal statement or principle and fact that expressed the sentiment of the people of Mississippi.

18. The effect of the Amendment to Section 244 of the Mississippi Constitution was to disfranchise Negroes who applied to become registered to vote.

In Warren County, where a study was made, Negro registration between 1947 and 1955 totaled over 1900.

In March, 1955 the amendment to Section 244 of the Constitution was put into operation.

For the entire period, March, 1955 through 1962, Negro registration in Warren County has not exceeded 265.

A similar situation exists in Hinds County, Mississippi, where Negro registration for one year, 1954-1955, prior to the implementation of the Amendment to Section 244, exceeded 800.

For the entire seven-year period, 1955 through June, 1962 Negro registration has remained under 1250 persons.

[fol. 920] ANSWER TO INTERROGATORY NUMBER 15(a) AS TO THE FACTUAL BASIS FOR THE ASSERTION THAT THE PURPOSE OF SECTION 241-A OF THE MISSISSIPPI CONSTITUTION WAS TO SUBJECT THE VAST MAJORITY OF NEGRO CITIZENS OF VOTING AGE IN MISSISSIPPI TO THIS ADDITIONAL REQUIREMENT WHEN THEY ATTEMPT TO BECOME REGISTERED VOTERS; AND TO EXEMPT THE MAJORITY OF THE WHITE CITIZENS OF VOTING AGE IN MISSISSIPPI FROM THIS REQUIREMENT SINCE THEY ARE ALREADY REGISTERED VOTERS, AND TO PROVIDE AN ADDITIONAL DEVICE WITH WHICH REGISTRARS COULD DISCRIMINATE AGAINST NEGRO CITIZENS WHO SEEK TO REGISTER TO VOTE—A MEANS OF DISCRIMINATION WHICH WOULD MAKE DETECTION MORE DIFFICULT.

The factual basis for the assertion that the purpose of Section 241-A of the Mississippi Constitution was to subject the vast majority of Negro citizens of voting age in Mississippi to this additional requirement when they attempt to become registered voters; and to exempt the majority of the white citizens of voting age in Mississippi from this requirement since they are already registered voters, and to provide an additional device with which registrars could discriminate against Negro citizens who seek to register to vote—a means of discrimination which could make detection more difficult is as follows:

The nature and sequence of legislative events affecting Negroes in Mississippi was as follows:

November 1959 —A Mississippi Advisory Committee for the United States Civil Rights Commission was established.

[fol. 921] January and February 1960—The Congress of the United States considered and debated the proposed Civil Rights Act of 1960 providing, among other things, for the authority of the Attorney General to inspect and copy voter registration records upon his demand and for the appointment of federal referees in cases involving voter discrimination.

February 10, 1960—A bill was introduced into the Mississippi Legislature which would amend the Constitution to permit the Legislature to determine the qualifications for grand and petit jurors. Under Article 26 of the Mississippi Constitution a grand or petit juror had to be a qualified voter.[1]

February 18, 1960—The Mississippi Advisory Committee announced that its prime target would be Negro voter registration throughout the state.[2]

March 3, 1960 —The Mississippi Legislature by joint resolution condemned the proposed 1960 Civil Rights Act. The Legislature commended Senators Eastland and Stennis for their fight against the proposed Civil Rights Act.[3]

[fol. 922] March 19, and 22, 1960 —Ten bills were introduced into the Mississippi House of Representatives that would tighten up provisions against trespassing and demonstrations such as sit-ins, in public places and inciting the commission of such acts.[4]

March 24, 1960 —A bill was introduced in the Mississippi Senate to permit registrars to destroy registration records.[5]

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[1] P. 60-1. H.C.R. No. 23. *Journal of the House of Representatives of the State of Mississippi, Regular Session, 1960.* P. 109.

[2] P. 60-25. The *Clarion-Ledger*. Jackson, Mississippi. February 18, 1960. P. 1.

[3] P. 60-17. Mississippi Laws, 1962, Ch. 510.

[4] P. 60-2—P. 60-5. H.B.'s 431, 432, 433, 490, 556, 558, 559, 560, 595. *Journal of the House of Representatives of the State of Mississippi, Regular Session, 1960.* Pp. 266, 267, 326, 327.

[5] P. 60-6. S.B. 1883. *Journal of the Senate of the State of Mississippi, Regular Session, 1960.* P. 319.

March 28, 1960 —At least thirteen important segregation bills were introduced into the Legislature; two were to amend the Constitution to require that electors be of good moral character;[6] three were to amend the Constitution to eliminate written applications to vote;[7] three were to amend the Constitution to eliminate the provision that the Legislature must maintain a public school system and to make the maintenance of a school system discretionary;[8] one bill would permit the district Boards of Trustees to close the schools;[9] and four [fol. 923] bills would make it perjury under state law to make false statements to any federal authority.[10] These last four bills named the Civil Rights Commission and the Federal Bureau of Investigation specifically.

April 12, 1960 —A concurrent resolution commending the determined stand of the Government of the Union of South Africa in maintaining its firm segregation laws was introduced in the Mississippi Legislature.[11]

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[6] P. 60-7. S.C.R. 147 (Ch. 550). *Journal of the Senate of the State of Mississippi, 1960.* P. 351.

[7] P. 60-8. S.C.R. 139, 142, 146. *Journal of the Senate of the State of Mississippi, 1960.* P. 350-352.

[8] P. 60-9, P. 60-10. S.C.R. 143 (Ch. 547) H.C.R. 57, H.C.R. 58. *Journal of the Senate of the State of Mississippi,* 1960. P. 350. *Journal of the House of Representatives of the State of Mississippi, 1960.* P. 391.

[9] P. 60-11. S.B. 1923 (Ch. 316) *Journal of the Senate of the State of Mississippi, 1960.* P. 340.

[10] P. 60-12. S.B. 1921, H. B. 732 (Ch. 255), H.B. 733 (Ch. 263), H.B. 734 (Ch. 56). *Journal of the Senate of the State of Mississippi, 1960.* P. 340. *Journal of the House of Representatives of the State of Mississippi, 1960.* P. 383.

[11] P. 60-13. H.C.R. 67 (Ch. 519). *Journal of the House of Representatives of the State of Mississippi,* 1960. P. 536.

April 13, 1960 —The Mississippi Legislature approved voter application destruction bill.[12]

April 28 and May 5, 1960 —The Legislature of Mississippi passed a joint resolution to amend Article XII of the Mississippi Constitution of 1890 to include a new section (Section 241-A) which added the voter qualification of good moral character.[13]

May 2, 1960 —The Mississippi Legislature approved a resolution to amend the Constitution so that grand and petit jurors need not be qualified electors.[14]

[fol. 924] May 5, 1960 —Mississippi Legislature approved the resolution to amend the Constitution to add the good moral character requirement. It also approved the proposed amendment authorizing the Legislature eliminating the requirement that public schools be maintained and permits the maintenance of public schools at the discretion of the Legislature.[15]

May 6, 1960 —The Civil Rights Act of 1960 was approved.

November 8, 1960—The proposed addition to Article XII requiring good moral character as a prerequisite to voting, was submitted to and adopted by the voters.[16] Section 241-A as adopted gave the Legislature power to enforce the provisions thereof by appropriate legislation.

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[12] P. 60-14. *Journal of the House of Representatives of the State of Mississippi 1960.* P. 564.

[13] P. 60-18. Mississippi Laws, 1960, Ch. 550.

[14] P. 60-15. *Journal of the House of Representatives of the State of Mississippi, 1960.* p. 992.

[15] P60-16. *Journal of the House of Representatives of the State of Mississippi 1960.* p. 934.

[16] P60-24. *Mississippi Official and Statistical Register, 1960-1965.* p. 402.

May 17, 21, and 22, 1962

The Mississippi Legislature adopted legislation implementing Section 241-A.[17] Section 3235 of the Mississippi Code was amended to add:[18]

> Except that any person registering after the effective date of this Act shall be of good moral character as required by Section 241-A of the Mississippi Constitution.

[fol. 925]

At the same time, Section 3209.6 of the Mississippi Code was amended to require the defendant State Board of Election Commissioners to include in the application forms spaces for information showing the good moral character of the applicant for registration.[19] Two new laws were also enacted relating to the good moral character of the applicants: one requiring publication of the names and addresses of all applicants; the other providing the procedure by which qualified electors, by affidavit, could challenge the good moral character of any applicant for registration.[20]

The purpose of the proposed amendment and package legislation was a matter of common knowledge in Mississippi. Newspaper reports and comments made this purpose clear. Mr. W. F. Minor, Mississippi correspondent for the *New Orleans Times-Picayune,* reported in that paper on April 3, 1960:[21]

> While Congress moves toward passage of a civil rights bill to help Negroes in exercising their voting

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[17] P60-19-P60-23. Mississippi Laws, 1962, Ch. 569, 571, 572, 573, 575.

[18] P60-23. Mississippi Laws, 1962, Ch. 575.

[19] P60-19. Mississippi Laws, 1962, Ch. 569.

[20] P60-21, P60-22. Mississippi Laws, 1962, Ch. 572, 573.

[21] P60-26. The *Times-Picayune.* New Orleans, Louisiana. April 3, 1960.

right in the South, Mississippi's legislature last week was working on new barriers to keep Negroes from voting.

The segregation strategists in the Legislature apparently were keeping an eye on the civil rights bill to find loopholes which they use to get around the law if it does pass.

[fol. 926] But, there apparently will still be some conflict between the voting provisions of the federal bill and the state laws.

The latest move of the legislative segregation forces is to wipe out all provisions in the state law and constitution requiring the keeping of permanent public records on voter registration applications.

Registration Study

This seeems to be the state's answer to the federal law—if there are no records, how can the federal government prove Negroes are victims of discrimination?

But, one provision of the civil rights bill has a requirement for keeping records in elections of federal officials for 22 months. It's uncertain how this would affect the new state voter registration strategy. . . .

Also part of the new strategy is the requirement that a voter must be of 'good moral character' to qualify to register.

In 1952, the people voted down a constitutional amendment which would have added to 'good moral character' requirement to voter registration.

The objection to the proposal was that the circuit clerk of a county would be the sole judge of a person's moral character as a prerequisite to voting. . . .

Another article by Mr. Minor appeared in the *Times-Picayune* on April 13, 1960, pointing out:[22]

With one eye on the public enactment of a new Civil Rights bill by Congress, the Mississippi Senate moved

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[22] P60-27. The *Times-Picayune*. New Orleans, Louisiana. April 13, 1960.

Tuesday to permit voter registrars to destroy records of rejected Negro voter applications.

The bill, which still faces House action, was rushed through the Senate shortly before it adjourned Tuesday. Explanation of the purpose of the bill was made while the Senate was still in an executive session called to confirm several gubernatorial appointments.

[fol. 927] But one Senator said later, 'If this bill is going to have any effect, it must be passed before the President signs the Civil Rights Bill.'

The *Jackson Daily News* reported in October, 1960:[23]

Voter approval of five proposed constitutional amendments of which three deal in the racial issue would help 'to protect our way of life'. Governor Ross Barnett said Monday.'

Barnett said he hopes voters will give 'such strong endorsement of these proposals that there will remain no doubt as to Mississippi's position on these vital matters'.

On October 27, 1960, five days before the election, the *Jackson Daily News* stated:[24]

The Citizens' Councils of Mississippi has added its endorsement to three constitutional amendments appearing on the Nov. 3 election ballot.

The amendments favored by the councils are those pertaining to juror qualifications, providing the legislature with additional authority in public education and strengthening voter registration qualifications.

A statement of endorsement by Bob Patterson, executive secretary, stated:

'The state executive committee of the association of

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[23] P60-28. The *Jackson Daily News*. Jackson, Mississippi. October, 1960.

[24] P60-29. The *Jackson Daily News*. Jackson, Mississippi. October 27, 1960.

Citizens' Councils of Mississippi urges the people of Mississippi to vote for these amendments as they provide additional defenses against the domination of Mississippians by alien pressure groups and agitators'.

The State Sovereignty Commission, the state's watchdog agency against racial strife, has already backed the three amendments, as has Gov. Ross Barnett.

The Mississippi chapter of the NAACP is among the few groups which has announced opposition to the amendments.

[fol. 928] ANSWER TO INTERROGATORY NUMBER 18(A) AS TO THE FACTS UPON WHICH THE UNITED STATES WILL RELY TO PROVE THE ASSERTION CONTAINED IN PARAGRAPH 66 OF THE COMPLAINT THAT THE PURPOSE OF EACH OF THE FOLLOWING ACTS OF THE LEGISLATURE OF MISSISSIPPI OR ANY ONE OR COMBINATION OF THEM IS TO DETER, PREVENT, DELAY AND HARASS NEGROES AND/OR TO MAKE IT MORE DIFFICULT FOR NEGROES IN THEIR EFFORTS TO BECOME REGISTERED VOTERS, TO FACILITATE DISCRIMINATION AGAINST NEGROES, AND/OR TO MAKE IT MORE DIFFICULT FOR THE UNITED STATES TO PROTECT THE RIGHT OF ALL ITS CITIZENS TO VOTE WITHOUT DISTINCTION OR DISCRIMINATION BASED ON RACE OR COLOR.

H. B. 900, Reg. Sess., 1962
H. B. 901, Reg. Sess., 1962
H. B. 905, Reg. Sess., 1962
H. B. 822, Reg. Sess., 1962
H. B. 904, Reg. Sess., 1962
H. B. 903, Reg. Sess., 1962

The facts upon which the United States will rely to prove the assertion contained in Paragraph 66 of the Complaint that the purpose of each of the Acts listed in the preceding paragraph, of the Legislature of Mississippi or any one or combination of them is to deter, prevent, delay and harass Negroes and/or to make it more difficult for Negroes in their efforts to become registered voters, to facilitate discrimination against Negroes, and/or to make it more difficult for the United States to protect the right of all its citizens to vote without distinction or discrimination based on race or color is as follows:

Plaintiff will rely on the record of all litigation brought by the United States under 42 U.S.C. 1971 and Title III of the 1960 Civil Rights Act within the State of Mississippi since 1960 as proof of notice to the State of Mississippi and its legislature that the United States government intended to enforce the command of the Fifteenth Amendment within the State of Mississippi.

[fol. 929] 1. Governor Ross Barnett, in a speech to a joint

session of the Mississippi Legislature on January 3, 1962, stated:[1]

> Since you met here in 1960, the so-called "Justice" Department of our ov government has invaded certain counties and muni[illegible]ities of our State and has become an active party to the harassment of our elected officials and of our people. The United States Attorney General has been directly responsible for the filing of federal lawsuits against certain duly-elected officers of this State under the now rather moth-eaten misnomer of "Civil Rights." He would create turmoil in our State. During the past year, our State has been made a regular racetrack for so-called "Freedom Riders." These questionable characters, coming to us from violence-plagued areas of the nation, have made repeated and deliberate attempts to inflame our people. They have deliberately violated our laws. They have refused to obey law enforcement officers. They came into our State to breach the peace, and hundreds of them succeeded in doing so. Our public officials and law enforcement officers are to be commended for the manner in which they have handled these law violators from other states. Our Sovereignty Commission has done a most effective job, too, in working closely with our officials and our peace officers.
>
> * * * * *
>
> We must protest every invasion. We must fight every inch of the way. We must let the entire nation know that we are proud of our conservative position and that we will not become a part of the blind mob that is rushing our nation into internation, one-world Socialism —or worse.

2. In 1962 Negro citizens and organizations conducted a voter registration drive in Mississippi for the purpose of increasing the number of Negroes eligible to vote in the 1962 primary elections.

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[1] P62-23. *Journal of the Senate of the State of Mississippi, 1962.* p. 19-20.

[fol. 930] 3. In 1962 Negroes were candidates for the office of representative to the Congress of the United States for the first time since Reconstruction.[2]

4. The Mississippi Legislature, during 1962, proposed and/or in some instances passed laws relating to candidates for office:

a. Under the Constitution of 1890, any qualified elector was eligible for public office.[3] A Constitutional amendment adopted by the Legislature gave the Legislature authority to specify additional qualifications for holding office.[4] This amendment was ratified by the electorate of Mississippi in the general election of 1962.

b. Another bill adopted by both Houses provided that all individuals comprising governing authority of municipalities be elected through a city-wide vote rather than by individual wards.[5]

The *Tupelo Daily Journal*, on March 2, 1962 discussed this measure:[6]

> [fol. 931] The Senate Thursday adopted a provision aimed at preventing the election of Negroes to city boards of aldermen.
>
> Under the bill, which now goes to the House, aldermen would be picked in city-wide votes rather than in ward elections.
>
> Sen. Bill Caraway of Leland, author of the measure,

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[2] P62-24. The *Tylertown Times*. Tylertown, Walthall, Mississippi. May 31, 1962. Also, according to the *Jackson Daily News*, 1954 was the first year since Reconstruction that (a) Negroes had served on a Washington County, Mississippi jury; (b) Negroes had run for any public office in Jefferson Davis County, Mississippi. The *Jackson Daily News*, Jackson, Mississippi. April 13, 1954 and April 27, 1954.

[3] P62-1. Mississippi Constitution of 1890. Article 12, Section 250.

[4] P62-3. Mississippi Laws, 1962. Ch. 640.

[5] P62-4. Mississippi Laws, 1962. Ch. 537.

[6] P62-25. *The Daily Journal*. Tupelo, Mississippi. March 2, 1962.

said wards in a few Mississippi cities may soon have enough Negro voters to swing elections.

c. Formerly the county political executive committees were required to appoint precinct managers from among supporters of all the candidates, whenever possible.[7] House Bill 443 (Ch. 565) eliminated this requirement.[8]

The *Morning Advocate,* on May 11, 1962, observed:[9]

> The Mississippi Senate approved a bill Thursday to help prevent Negro poll workers serving in primary elections.
>
> The House-passed bill was put through the Senate in the absence of reporters, who were out while the chamber met in a executive session. The bill was called up and passed before newsmen could re-enter the chamber.
>
> "The less you say about it to the press the better," one Senator was heard to remark.
>
> The bill permits county executive committees to name poll managers, removing a feature that the managers must be selected from among the backers of leading candidates.

On March 1, 1962 the *Delta Democrat-Times* stated:[10]

> [fol. 932] Mississippi law is constantly changing to ward off racial integration threats.
>
> One law undergoing such a change now concerns appointment of persons to manage voting precincts during elections.
>
> The present law carries a provision that county Democratic executive committees equally distribute precinct manager posts among supporters of all candidates for the chief offices to be filled.
>
> The House of Representatives, mindful that two

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[7] P62-2. Mississippi Code of 1942. § 7505.

[8] P62-5. Mississippi Laws, 1962, Ch. 565.

[9] P62-26. *The Morning Advocate,* Baton Rouge, Louisiana. May 11, 1962.

[10] P62-27. *The Delta Democrat-Times.* Greenwood, Mississippi, March 1, 1962.

Negroes are running for Congress, voted overwhelmingly Wednesday afternoon to delete the provision and the Senate is expected to follow suit.

No reason was given for the deletion during House discussion, but it was generally known that it stemmed from the candidacies of Negroes Robert Smith of Jackson and Theodore Trammell of Clarksdale.

d. Senate Bill 1580 (Ch. 566) proposed increased qualifying fees for candidates for political party nominations and certain general elections candidates.[11]

e. House Bill 991 would have increased the number of petitioners needed to place a candidate's name on the ballot when he was not nominated by a political party.[12]

f. Senate Bill 1706 (Ch. 567) required candidates in primary elections to qualify 60 days before the primary.[13]

g. Senate Bill 1943 provided for the nomination of county and county district officers by convention rather than by popular primary elections.[14]

[fol. 933] h. Senate Bill 2093 provided that the participant in a primary election cannot oppose the party nominee in the general election or sign the petition of an opponent.[15]

Although not all of these measures were enacted in Mississippi law, they indicate a desire by members of the Mississippi Legislature to tighten requirements for candidacy for public office and to provide for stricter supervision of candidates by party executive committees.

5. During the 1962 Session, the Mississippi Legislature also attempted to implement; with four bills, the 1960 amendment to Section 264 of the Constitution which eliminated

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[11] P62-6. Mississippi Laws, 1962, Ch. 566.

[12] P62-16. H.B. 991. Passed in House, May 11, 1962. Did not pass in Senate.

[13] P62-7. Mississippi Laws, 1962, Ch. 567.

[14] P62-17. S.B. 1943, Introduced in Legislature, March 27, 1962. Did not pass.

[15] P62-18. S. B. 2093. Introduced in Senate. April 19, 1962. Did not pass.

the requirement that a grand or petit juror be a qualified elector.[16]

6. On April 10, 1962, The United States was granted a temporary injunction by the Court of Appeals prohibiting Theron C. Lynd, Circuit Clerk and Registrar of Forrest County, Mississippi, from discriminating against Negro applicants for application.[17]

[fol. 934] On April 17, 1962 a series of registration laws was introduced into the Mississippi House of Representatives.

A comparison of the findings of fact and the orders in the Lynd case with the bills introduced into the Legislature immediately following shows the following:

Finding of Fact:	Many white applicants were not required to fill out application forms; other white applicants were given assistance in filling out applications; others were not rejected for filling out the form incorrectly.[18]
Order:	The registrar must give Negroes the benefit of the same type of assistance he gives to white persons.[19]

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[16] a-P62-8. Mississippi Laws, 1962. Ch. 308;

b-62-19. H.B. 720. Passed in House, May 24, 1962, Did not pass in Senate;

c-P62-20. S. B. 1536. Introduced in Senate, January 15, 1962, Did not pass;

d-P62-21. S. B. 2009. Introduced in Senate, April 10, 1962, Did not pass.

[17] P62-28. *United States* v. *Lynd*, 301 f. 2d 818 (5th Cir. 1962) (Reh. den. 5/21/62).

[18] P62-29. *United States* v. *Lynd*, 301 f. 2d 821. (5th Cir. 1962) (Reh. Den. 5-21-62)

[19] P62-28 and P62-30. *United States* v. *Lynd*, 301 f. 2d 818; 823 (5th Cir. 1962) (Reh. Den. 5-21-62)

Legislative Action:	One bill was introduced which required that all blanks on the application form be correctly and completely filled out, and that no assistance be given to applicants by the registrar.[20]
Finding of Fact:	Negroes were not given the cause or reason for the rejection of their applications for registration.[21]

[fol. 935]

Legislative Action:	A bill was introduced which provided that the registrar not give reasons for rejection to applicants except that when the rejection was solely for lack of "good moral character," this fact might be written on the rejected application form.[22]
Finding of Fact:	Obviously qualified Negroes were rejected, including six with bachelor's degrees and three with master's degrees.[23]
Legislative Action:	Several bills were introduced to change the qualifications for voters. The 1960 amendment to Section 244 of the Mississippi Constitution was implemented by inserting a good moral character requirement into laws regarding eligibility to vote in general and primary elections.[24] It was further implemented by changing the application form to provide a space for the determination of moral charac-

[20] P62-9. Mississippi Laws, 1962. Ch. 570.

[21] P62-29. *United States* v. *Lynd,* 301 f. 2d 821 (5th Cir. 1962) (Reh. Den. 5-21-62)

[22] P62-10. Mississippi Laws, 1962. Ch. 571.

[23] P62-29. United States v. Lynd, 301 f. 2d 821 (5th Cir. 1962) (Reh. Den. 5-21-62).

[24] P62-11. Mississippi Laws, 1962. Ch. 575.

Legislative Action:	ter.[25] Another bill required the publication of names and addresses of all applicants for registration.[26] [fol. 936] One bill permitted third parties to challenge the good moral character of any applicant, after the publication of his name. This bill also provided that the registrar would arrange and conduct a hearing to determine the moral character of challenged applicants.[27]
Finding of Fact:	Negroes whose applications were rejected were required to wait six months before re-applying, although there was no statutory basis for this requirement.[28]
Legislative Action:	A bill which would establish a six-month waiting period was introduced and passed in the senate.[29]

In its investigations and litigation in Mississippi, the United States was using Mississippi poll books to help discover patterns of racial discrimination in voting.

A bill included in the 1962 package legislation removed from the Mississippi poll books the column indicating the race of the voter.[30]

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[25] P62-12. Mississippi Laws, 1962. Ch. 569.

[26] P62-13. Mississippi Laws, 1962. Ch. 572.

[27] P62-22. Mississippi Laws, 1962. Ch. 573.

[28] P62-29. United States v. Lynd, 301 f. 2d 821 (5th Cir. 1962) (Reh. Den. 5-21-62).

[29] P62-22. S. B. 1927.

[30] P62-15. Mississippi Laws, 1962. Ch. 574.

[fol. 937] ANSWER TO INTERROGATORY NUMBER 18(a) AS TO THE NAME, ADDRESS, AND OFFICIAL CAPACITY OF EACH PERSON KNOWN TO THE UNITED STATES TO HAVE BEEN MOTIVATED IN THE ENACTMENT OF EACH OF THESE ACTS OF THE LEGISLATURE, BY SAID PURPOSE.

The name, address, and official capacity of each person known to the United States to have been motivated, in the enactment of each of these Acts of the Legislature, by said purpose, have not as yet been ascertained.

[fol. 938] ANSWER TO INTERROGATORY NUMBER 18(b), AS TO THE SPECIFIC MANNER OR MEANS BY WHICH SAID PURPOSE WAS EXECUTED OR PUT INTO EFFECT.

The United States has not yet ascertained the specific manner or means by which said purpose was executed or put into effect.

[fol. 939] ANSWER TO INTERROGATORY NUMBER 18(c) AS TO THE NAME AND ADDRESS OF EACH PERSON THE UNITED STATES PLANS TO CALL AS A WITNESS OR OTHERWISE USE ON THE TRIAL OF THIS CAUSE TO PROVE THE ABOVE-MENTIONED ALLEGATIONS OF PARAGRAPH 66 OF THE COMPLAINT.

The United States has not yet ascertained the name and address of each person whom it plans to call as a witness or otherwise use on the trial of this cause to prove the above-mentioned allegations of paragraph 66 of the Complaint.

[fol. 940] ANSWER TO INTERROGATORY NUMBER 18(d) AS TO THE SPECIFIC DOCUMENTS WHICH THE UNITED STATES INTENDS TO USE TO PROVE THE ALLEGATIONS OF SAID PARAGRAPH 66 OF THE COMPLAINT.

The specific documents which the United States intends to use to prove the allegations of said paragraph 66 of the Complaint are as follows:

(1) Mississippi Laws, 1962.
(2) *Journal of the Senate of the State of Mississippi, Regular Session, 1962.*
(3) *Journal of the House of Representatives of the State of Mississippi, Regular Session, 1962.*
(4) Mississippi Constitution of 1890.
(5) Mississippi Code of 1942.
(6) *United States* v. *Lynd,* 301 F.2d 818 (5th Cir. 1962).
(7) The *Daily Journal,* Tupelo, Mississippi.
(8) The *Morning Advocate,* Baton Rouge, Louisiana.
(9) The *Delta Democrat-Times,* Greenwood, Mississippi.

[fol. 941] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3312

[Title omitted]

ANSWERS TO INTERROGATORIES OF STATE OF MISSISSIPPI; MRS. PAULINE EASLEY, CIRCUIT CLERK AND REGISTRAR OF CLAIBORNE COUNTY; J. W. SMITH, CIRCUIT CLERK AND REGISTRAR OF COAHOMA COUNTY; T. E. WIGGINS, CIRCUIT CLERK AND REGISTRAR OF LOWNDES COUNTY—Filed September 3, 1963

Comparison of Education for Negroes and White Persons
1890—1963

[fol. 942] ANSWER TO INTERROGATORY NUMBER 11(a) AS TO THE ENTIRE FACTUAL BASIS ON WHICH THE UNITED STATES MAKES THE ASSERTION CONTAINED IN PARAGRAPH 31 OF THE COMPLAINT THAT PUBLIC EDUCATIONAL FACILITIES PROVIDED FOR NEGROES WERE AND ARE INFERIOR TO THOSE PROVIDED FOR WHITE PERSONS.

The factual basis of the allegation that public education facilities provided for Negroes in Mississippi were and are inferior to those provided for white persons is as follows:

A. Since at least 1890 all public elementary and secondary schools in Mississippi have been segregated by race and until October 1, 1962, all public schools in Mississippi had been segregated by race.

Mississippi Constitution, Article 4, section 207. On October 1, 1962, James Meredith, a Negro student, was admitted to the University of Mississippi Undergraduate School by Court order. He graduated on August 18, 1963. On June 6, 1963, Cleve McDowell, a Negro student, was admitted to the Law School of the University of Mississippi. All other public educational institutions in Mississippi are segregated at the present time.

B. Since at least 1890 there have been more Negro children than white children of school age in Mississippi

State of Mississippi School Census

Year	White	Negro
1890 [1]	207,652	292,581
1910 [2]	301,548	410,089
1929 [3]	379,678	493,987
1949 [4]	393,804	492,349
1960 [5]	329,215	337,871

[1] E-O-3 *Biennial Report of the State Superintendent of Public Education to the Legislature of Mississippi for the Scholastic Years 1891-92 and 1892-93*, p. III.

[2] E-O-5 *Biennial Report of the State Superintendent of Public Education to the Legislature of Mississippi for the Scholastic Years 1909-10 and 1910-11*, p. 145.

[3] E-O-7 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi for the Scholastic Years 1929-1930 and 1930-1931*, p. 99.

[4] E-O-18 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi for the Scholastic Years 1949-1950 and 1950-1951*, p. 114.

[5] E-O-75 *Statistical Data School Session 1961-1962*, Mississippi State Department of Education (1962), p. 1.

[fol. 943] C. The public elementary and secondary schools in Mississippi provided for white children have been and are supreior to public school facilities provided for Negroes.

1. White public school teachers were and are more highly trained than Negro public school teachers in Mississippi

	Graduate Degree(s)	College Degree	Not H.S. Graduate
	1929–1930		
White	334 [6]	3,263 [6]	358 [6]
Negro	Not available	400 [7]	2,719 [7]
	1939–1940 [8]		
White	459	5,977	11
Negro	Not available	600	3,000
	1949–1950 [9]		
White	710	5,943	0
Negro	27	1,194	710
	1953–1954 [9]		
White	1,493	6,742	0
Negro	90	2,350	78
	1960–1961 [9]		
White	2,345	8,252	0
Negro	489	6,328	0
	1961–1962 [10]		
White	2,473	8,585	0
Negro	553	6,829	0

[fol. 944] [6] E-O-8 *Twenty Years of Progress 1910-1930 and A Biennial Survey Scholastic Years 1929-1930 and 1930-1931 of Public Education in Mississippi*, p. 87.

[7] E-O-37 *Report of the Committee of Investigation of the Teacher Training Facilities Provided for Negroes in Mississippi* (1930) (Bulletin #61, State of Mississippi, Dept. of Ed.), pp. 35, 51.

[8] E-O-13 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi for the Scholastic Years 1939-1940 and 1940-1941*, pp. 17, 39.

[9] E-O-40 *Public Education in Mississippi: Reports of Advisory Study Group to the Legislative Education Study Committee (1961)*, vol. 1, p. 236.

[10] E-O-75 *Statistical Data School Session 1961-1962*, Mississippi State Department of Education (1962), p. 34.

[fol. 945] 2. White teachers were and are more highly paid than Negro teachers

1890–1891 [11]

Average Monthly Salary

White	$32.41
Negro	22.54

1909–1910 [12]

Average Monthly Salary

	City Districts	County Districts
White	$63.03	$42.38
Negro	29.08	20.52

Average Yearly Salary of Classroom Teachers [13]

1941–1942	
White	$ 735.39
Negro	232.93
1949–1950	
White	1,805.69
Negro	710.56
1953–1954	
White	2,176.55
Negro	1,244.08
1961–1962	
White	3,742.39
Negro	3,236.75

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[11] E-O-3 *Biennial Report of the State Superintendent of Public Education to the Legislature of Mississippi for Scholastic Years* 1891-92 and 1892-93, p. IV.

[12] E-O-5 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi for the Scholastic Years 1909-10 and 1910-11*, p. 103.

[13] E-O-75 *Statistical Data School Session 1961-62*, Mississippi State Department of Education (1962), p. 42.

[fol. 946] 3. In Mississippi more white teachers are provided per white child in attendance than per Negro child in attendance.

	Pupil-Teacher Ratio
	1931–1932 [14]
White	23–1
Negro	34–1
	1939–1940 [15]
White	25.5–1
Negro	35.1–1
	1951–1952 [16]
White	26–1
Negro	34–1
	1961–1962 [17]
White	23–1
Negro	28.5–1

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[14] E-O-8 *Twenty Years of Progress, 1910-1930 and a Biennial Survey Scholastic Years 1929-30 and 1930-31 of Public Education in Mississippi*, p. 67.

[15] E-O-13 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi for the Scholastic Years 1939-40 and 1940-41*, pp. 39, 59 [computed: number of teachers/average daily attendance].

[16] E-O-67 *Statistical Data School Session 1951-52*, Mississippi State Department of Education, p. 24.

[17] E-O-75 *Statistical Data School Session 1961-62*, Mississippi State Department of Education, pp. 1, 39 [computed: number of teachers/average daily attendance].

[fol. 947] 4. More money is spent for instruction of white children than Negro children in Mississippi

	Instructional Cost Per Child in Average Attendance
1900–1901 [18]	
White	$ 8.20
Negro	2.67
1929–1930 [19]	
White	$ 40.42
Negro	7.45
1939–1940 [20]	
White	$ 31.23
Negro	6.69
1949–1950 [21]	
White	$ 78.70
Negro	23.83
1956–1957 [22]	
White	$128.50
Negro	78.70
1960–1961 [23]	
White	$173.42
Negro	117.10

[18] E-O-4 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi for the Scholastic Years 1899-1900 and 1900-1901*, p. 17.

[19] E-O-7 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi for the Scholastic Years 1929-1930 and 1930-1931*, pp. 99, 103 [computed: total instructional costs/ average daily attendance].

[20] E-O-13 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi for the Scholastic Years 1939-1940 and 1940-1941*, pp. 59, 75 [computed: total instructional cost/ average daily attendance].

[fol. 948] [21] E-O-18 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi for the Scholastic Years 1949-1950 and 1950-1951*, pp. 114, 133 [computed: total instructional cost average daily attendance].

[22] E-O-21 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi for the Scholastic Years 1955-1956 and 1956-1957*; pp. 113, 155 [computed: total instructional cost/ average daily attendance].

[23] E-O-23 *Biennial Report and Recommendations of the*

[fol. 949] (a) In 1961-62 most school districts in Mississippi spent far more for the instruction of each white child than for the instruction of each Negro child.[24]

Following are comparisons of expenditures above the state minimum program for instruction in Mississippi school districts, listed on a per-child basis:

District	White	Negro
Aberdeen Sep.	$ 54.78	$ 11.15
Alcorn Co.	19.39	—
Amite Co.	70.46	2.24
Amory Sep.	70.65	28.22
Anguilla	130.85	21.15
Attala Co.	62.67	12.42
Baldwyn Sept.	32.45	10.04
Bay St. Louis Sep.	105.55	19.43
Benton Co.	59.42	15.63
Biloxi Sep.	128.92	86.25
Bolivar Co. 1	125.10	2.32
Bolivar Co. 2	117.63	3.16
Bolivar Co. 3	177.37	4.46
Bolivar Co. 4	101.55	23.86
Bolivar Co. 5	123.65	5.68
Bolivar Co. 6	—	14.26
Brookhaven Sep.	58.56	20.79
Calhoun Co.	38.96	21.28
Canton Sep.	35.79	17.00
Carroll Co.	81.26	7.08
Chickasaw Co.	55.42	.62
Choctaw Co.	46.84	16.97
Claiborne Co.	142.64	19.88
Clarke Co.	56.82	16.11
Clarksdale Sep.	146.06	25.07
Clay Co.	64.07	15.31
Coahoma Co.	139.33	12.74
Coffeeville	68.95	6.55
Columbia Sep.	90.73	27.82
Columbus Sep.	106.74	54.92
Copiah Co.	49.88	7.11
Corinth Sep.	79.94	41.32
Covington Co.	52.53	23.95
Desoto Co.	87.66	3.74
Drew Sep.	104.06	20.93
East Jasper	111.22	8.57
East Tallahatchie	69.15	6.61

State Superintendent of Public Education to the Legislature of Mississippi for the Scholastic Years 1959-1960 and 1960-1961, pp. 33, 77 [computed: total instructional cost/average daily attendance].

[24] E-O-77 *Southern School News*, February 1962, p. 6. The figures were taken from a report of the State of Mississippi Department of Education. This report was not officially published until after a newspaper report referred to it. The non-official source is used here because the United States does not have this report at the present time.

[fol. 950]

District	White	Negro
Forrest Co.	$ 67.76	$ 34.19
Forrest Sept.	86.48	40.58
Franklin Co.	77.62	13.86
George Co.	66.53	34.65
Greene Co.	69.50	11.37
Greenville Sep.	134.43	34.25
Greenwood Sep.	116.78	46.45
Grenada Co.	91.51	13.31
Grenada Sept.	79.00	27.38
Gulfport Sept.	93.34	50.76
Hancock Co.	64.16	—
Harrison Co.	58.91	14.24
Hattiesburg Sep.	115.96	61.69
Hazlehurst Sep.	90.95	9.76
Hinds Co.	80.24	10.41
Hollandale	117.81	18.00
Holly Bluff	191.17	1.26
Holly Springs Sep.	99.78	7.84
Holmes Co.	117.92	5.73
Houston Sep.	44.75	—
Humphreys Co.	116.62	15.35
Indianola Sep.	72.26	15.17
Itawamba Co.	34.99	46.06
Iuka Sep.	29.73	25.32
Jackson Co.	76.51	68.99
Jackson Sep.	149.64	106.37
Jefferson Co.	96.29	2.60
Jefferson Davis Co.	59.44	10.24
Jones Co.	38.25	29.45
Kemper Co.	71.28	11.91
Kosciusko Sep.	74.64	21.16
Lafayette Co.	37.79	8.12
Lamar Co.	52.82	43.22
Lauderdale Co.	62.34	34.28
Laurel Sep.	79.63	36.33
Lawrence Co.	57.01	23.14
Leake Co.	48.85	17.37
Lee Co.	21.67	7.67
Leflore Co.	175.38	9.52
Leland	113.02	24.99
Lincoln Co.	68.51	26.06
Long Beach Sep.	138.38	—
Louisville-Winston	47.82	7.64
Lowndes Co.	64.03	8.53
Lumberton Cons.	85.47	16.09
Madison Co.	171.24	4.35
Marion Co.	42.91	19.10
Marshall Co.	69.56	8.91
McComb Sep.	61.51	18.85
Meridian Sep.	116.58	63.11
Monroe Co.	44.11	6.20
Montgomery Co.	48.73	6.71
Moss Point Sep.	86.63	43.30
Natchez-Adams	131.84	49.38
Neshoba Co.	21.16	7.12
Nettleton Line	26.81	1.58
New Albany	55.93	13.42
Newton Co.	67.42	17.98

[fol. 951]

District	White	Negro
Newton Sep.	81.23	19.83
North Panola Cons.	104.28	1.76
North Pike	30.89	.76
North Tippah Co.	35.14	.00
Noxubee Co.	113.29	1.21
Oakland Cons.	104.03	6.15
Ocean Springs Sep.	78.26	84.08
Okolona Sep.	72.39	14.54
Oktibbeha Co.	103.87	8.91
Oxford Sep.	69.42	30.67
Pascagoula Sep.	102.88	45.64
Pass Christian Sep.	127.98	78.50
Pearl River Co.	61.70	—
Perry Co.	98.98	38.51
Philadelphia Sep.	85.05	30.33
Picayune Sep.	74.54	26.48
Pontotoc Co.	34.75	13.59
Pontotoc Sep.	78.91	—
Poplarville Sep.	57.96	18.69
Prentiss Co.	33.88	19.88
Quitman Cons.	60.70	13.48
Quitman Co.	90.28	8.41
Rankin Co.	72.71	14.78
Richton Sep.	52.09	14.41
Scott Co.	31.55	10.95
Senatobia Sep.	65.08	10.74
Sharkey-Issaquena	18.75	25.74
Simpson Co.	41.42	8.97
Smith Co.	54.34	20.43
South Panola	59.55	1.35
South Pike	101.92	10.55
South Tippah	32.40	—
Starkville Sept.	78.00	19.11
Stone Co.	60.27	13.03
Sunflower Co.	127.36	11.49
Tate Co.	67.08	5.84
Tishomingo Co.	41.06	2.70
Tunica Co.	172.80	5.99
Tupelo Sep.	96.87	31.41
Union Co.	26.68	7.86
Union Sep.	47.62	7.24
Vicksburg Sep.	124.33	24.17
Walthall Co.	48.08	10.55
Warren Co.	101.66	10.62
Water Valley	53.44	2.75
Wayne Co.	62.76	8.69
Webster Co.	34.62	11.56
Western Line	198.74	52.27
West Jasper	55.71	9.87
West Point Sept.	51.26	11.91
West Tallahatchie	141.95	13.47
Wilkinson Co.	80.76	1.28
Winona Sep.	70.95	12.92
Yazoo Co.	245.55	2.92
Yazoo City Sep.	98.43	35.64

[fol. 952] 5. Every school district in Mississippi in 1954-1955 spent more money for the education of white children than for the education of Negro children.[25]

County and Separate District	White Per Pupil Cost	Negro Per Pupil Cost
Adams	$235	$ 84
Natchez	194	138
Alcorn	109	77
Corinth	146	117
Holly	77	
Rienzi	121	
Amite	180	88
Attala	151	82
Kosciusko	167	96
Benton	188	79
Bolivar	206	73
Calhoun	131	111
Carroll	189	84
Chickasaw	187	84
Houston	156	91
Okolona	181	111
Choctaw	165	108
Claiborne	396	97
Port Gibson	186	87
Clarke	167	92
Clay	202	81
West Point	164	101
Coahoma	226	84
Clarksdale	226	91
Copiah	168	76
Hazlehurst	168	85
Covington	154	122
DeSoto	219	51
Forrest	156	130
Hattiesburg	165	110
Franklin	175	110
Knoxville		111
White Apple		209
George	159	107
Greene	168	98
Grenada	207	87
Grenada	159	95
Hancock	156	61
Bay St. Louis	187	138
Waveland	189	
Harrison	141	84
Biloxi	191	141
Fernwood	163	
Gulfport	187	124
Long Beach	227	103
Mississippi City	158	100
Pass Christian	186	105

[25] E-O-39 *A Report to the People of Mississippi on the White House Conference on Education*, Bulletin No. 140 (1955), State of Mississippi Department of Education, pp. 53-56.

[fol. 953]

County and Separate District	White Per Pupil Cost	Negro Per Pupil Cost
Hinds	163	93
Jackson	217	157
Holmes	222	70
Durant	185	98
Lexington	231	97
Humphreys	190	91
Issaquena		153
Itawamba	113	94
Jackson	142	138
Lyon	172	146
Moss Point	175	125
Ocean Springs	155	111
Pascagoula	182	148
Jasper	171	92
Jefferson	206	67
Jefferson Davis	185	96
Jones	144	136
Ellisville	137	93
Laurel	156	85
Ovett	125	122
Kemper	175	75
Scooba	222	72
Lafayette	155	93
Oxford	171	112
Lamar	142	72
Lauderdale	155	102
Meridian	211	125
Lawrence	164	104
Leake	169	104
Lee	127	87
Baldwyn	129	72
Tupelo	169	114
Leflore	202	76
Greenwood	187	125
Lincoln	198	115
Brookhaven	151	108
Lowndes	149	82
Columbus	178	111
Crawford	197	51
Prairie	440	45
Madison	324	88
Canton	160	78
Flora	210	
Madison-Ridgeland	264	55
Marion	140	111
Columbia	144	110
Marshall	180	79
Holly Springs	167	
Monroe	136	97
Aberdeen	147	85
Amory	148	116
Prairie	312	69
Montgomery	155	101
Winona	161	59
Neshoba	137	
Philadelphia	175	114

[fol. 954]

County and Separate District	White Per Pupil Cost	Negro Per Pupil Cost
Newton	158	74
Newton	191	136
Union	158	82
Noxubee	191	64
Macon	199	78
Oktibbeha	176	83
Starkville	175	100
Panola	162	75
Como	236	76
Sardis	213	99
Pearl River	151	79
Picayune	174	96
Poplarville	151	110
Perry	163	114
Richton	151	75
Pike	166	79
Fernwood	158	98
Magnolia	183	81
McComb	148	104
Osyka	171	63
Summit	174	69
Universal	273	93
Pontotoc	134	108
Pontotoc	159	
Prentiss	124	92
Quitman	183	79
Marks	142	101
Rankin	159	69
Scott	177	109
Forest	163	123
Sharkey	238	106
Simpson	156	106
Braxton	179	
D'Lo	200	
Smith	133	122
Stone	156	111
Sunflower	195	81
Drew	178	90
Indianaola	180	90
Ruleville	210	85
Tallahatchie	196	94
Glendora	600	53
Sumner	205	80
Tutwiler	237	58
Tate	187	76
Coldwater	207	52
Senatobia	167	45
Tippah	134	74
Ripley	129	97
Tishomingo	112	98
Iuka	119	87
Tunica	267	67
Union	120	90
New Albany	170	116
Walthall	158	82
Tylertown	161	86

[fol. 955]

County and Separate District	White Per Pupil Cost	Negro Per Pupil Cost
Warren	179	87
Vicksburg	172	92
Washington	231	109
Greenville	209	87
Wayne	157	76
Webster	142	103
Wilkinson	201	56
Winston	155	82
Louisville	162	99
Yalobusha	155	83
Yazoo	217	91
Yazoo City	178	106
County Average	$161	$ 87
Separate District Average	181	106

6. White school children have longer school terms than Negro school children

1930–31 [26]

	Length of Term in Days
White	165
Negro	119

1961–62 [27]

	Number of Schools	
	8 Month Terms	9 Month Terms
White	2	637
Negro	103	399

[26] E-O-8. *Twenty Years of Progress 1910-30 and a Biennial Survey Scholastic Years 1929-30 and 1930-31 of Public Education in Mississippi*, p. 136.

[27] E-O-75 *Statistical Data School Session 1961-62*, Mississippi State Department of Education, Division of Administration and Finance, p. 16.

[fol. 956] 7. In 1910 the State of Mississippi decided that consolidation of small rural schools would provide better education for children.[28]

(a) Between 1910 and 1930 white schools were consolidated and Negro schools were not.

1930-31 [29]

	No. Consolidated Schools	No. Unconsolidated Schools
White	959	789
Negro	16	3,484

(1) If the teacher is only responsible for one or at the most two grades, it is easier to secure a good teacher with professional training than in a one-room country school.

(2) The economy of the consolidated school makes a longer school term possible.

(3) Pupils are far more interested in school and therefore attend more frequently and remain in school and go on to high school.

(4) The entire curriculum can be enriched.

(5) The school building will be much superior.

(6) "Consolidation offers the bases for the solution of more of the rural school problems than anything that has yet been offered. It is the only way of securing really good country schools. It is the only school that proposes to educate the country boy throughout high school without disturbing his home relations or taking him out of it".

E-9-5 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi for the Scholastic Years 1909-10 and 1910-11*, pp. 25-28.

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[28] The biennial report of the State Superintendent of Public Education in Mississippi for 1909-11 cited a number of advantages for consolidation including:

[29] E-0-8 *Twenty Years of Progress, 1910-30 and A Biennial Survey for the Scholastic Years 1929-30 and 1930-31 of Public Education in Mississippi*, pp. 51, 53.

(b) In 1930-31 Negro children in Mississippi still went to schools where one or two teachers taught all grades.

1930–31 [30]

	One-Teacher Schools	Two-Teacher Schools
White	515	202
Negro	2,411	832

[fol. 957] (c) Real consolidation of Negro schools did not begin until after the United States Supreme Court's decision in Brown v. Board of Education—40 years after the consolidation of white schools.

Number of One-Teacher Schools [31]

1952–53	
White	42
Negro	1,077
1953–54	
White	48
Negro	1,040
1956–57	
White	20
Negro	504
1958–59	
White	1
Negro	295
1961–62	
White	1
Negro	47

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[30] E-0-8 *Twenty Years of Progress 1910-30 and A Biennial Survey for the Scholastic Years 1929-30 and 1930-31 of Public Education in Mississippi*, p. 51.

[31] E-0-75 *Statistical Data School Session 1961-62*, Division of Administration and Finance, Mississippi State Department of Education, p. 32.

8. At all times in Mississippi, secondary education has been made available to more white children than Negro children.[32]

	Number of Secondary Schools	Enrollment
1930–31		
White	706 [33]	49,742 [33]
Negro	46 [34]	5,012 [33]
1952–53 [35]		
White	474	61,323
Negro	285	26,667
1961–62 [35]		
White	354	77,694
Negro	198	48,798

[32] [fol. 958] Yet there have always been more Negro than white children of school age. See paragraph B.

[33] E-0-8 *Twenty Years of Progress 1910-30 and A Biennial Survey for the Scholastic Years 1929-30 and 1930-31 of Public Education in Mississippi*, pp. 17, 124, 129.

[34] E-0-37 *A Report of the Committee of Investigation of the Teacher Training Facilities for Negroes in Mississippi*, Bulletin No. 61, State of Mississippi Department of Education (1930), p. 26.

[35] E-0-75 *Statistical Data School Session 1961-62*, Division of Administration and Finance, State of Mississippi Department of Education, pp. 6, 32.

[fol. 959] 9. At all times more white high schools than Negro high schools are accredited by the State of Mississippi and regional accrediting associations.

	State Accredited		Regional Accreditation	
	Number	% of high schools	Number	% of high schools
		1943–44		
White	315 [36]	56.5%	87 [36]	15.6%
Negro	20 [37]	(figures not available)	(figures not available)	
		1947–48 [38]		
White	292	50.7%	91	16.6%
Negro	37	29.6%	8	6.4%
		1949–50 [39]		
White	303	63.1%	91	18.9%
Negro	55	37.2%	7	4.7%
		1954–55 [40]		
White	(figures not available)		93	91.9%
Negro			7	4.2%
		1959–60 [41]		
White	404	(figures not	96	(figures not
Negro	176	available)	7	available)

[fol. 960] [36] E-0-15 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi for the Scholastic Years 1943-44 and 1944-45*, p. 26.

[37] E-0-29 *Mississippi Blue Book: Biennial Report of the Secretary of State to the Governor and Legislature of Mississippi (1943-45)*, p. 49.

[38] E-0-30 *Mississippi Blue Book: Statistical Register of the State of Mississippi (1945-49)*, p. 80.

[39] E-0-31 *Mississippi Official and Statistical Register (1949-51)*, p. 117.

[40] E-0-32 *Mississippi Official and Statistical Register (1956-60)*, p. 183.

[41] E-0-33 *Mississippi Official and Statistical Register (1960-64)*, p. 202.

1960–61 [42]

Accredited Status of All Schools

Number of Schools

	White	Negro
Elementary	562	642
Jr. High	48	29
High	322	190

State Accreditation

	Number		Percent	
	White	Negro	White	Negro
Elementary	545	285	96.9%	44.3%
Jr. High	48	26	100.0%	89.7%
High	322	145	100.0%	76.3%

Regional Accreditation

	Number		Percent	
	White	Negro	White	Negro
Elementary	150	66	26.7%	10.3%
Jr. High	2	0	3.4%	0 %
High	89	7	27.6%	3.7%

[fol. 961] D. The Public Higher Education Provided for Negroes Is Inferior to That Provided for Whites in Mississippi.

1. At all times more junior colleges have been provided for white students than for Negro students

	Number	Enrollment
	1936–37 [43]	
White	11	3,012
Negro	0	0
	1949–50 [44]	
White	14	4,971
Negro	1	26

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[42] E-0-23 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi for the Scholastic Years 1959-60 and 1960-61*, p. 137.

[43] E-0-11 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi for the Scholastic Years 1935-36 and 1936-37*, p. 50.

[44] E-0-18 *Biennial Report and Recommendation of the State Superintendent of Public Education to the Legislature of Mississippi for the Scholastic Years 1949-50 and 1950-51*, p. 48.

	1954–55 [46]	
White	14	6,233
Negro	1	217
	1960–61 [46]	
White	14	9,269
Negro	3	843

2. At all times more senior colleges have been provided for white students than for Negro students

	Number	Enrollment
	1935–45 [47]	
	Average Annual Enrollment	
White	5	5,145
Negro	2	466
	1953–54 [48]	
White	5	12,061
Negro	3	1,872
	1960–61 [49]	
White	5	14,435
Negro	3	2,990

[fol. 962] [45] E-0-20 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi for the Scholastic Years 1953-54 and 1954-55*, p. 31.

[46] E-0-23 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi for the Scholastic Years 1959-60 and 1960-61*, p. 144.

[47] E-0-43 *Mississippi Study of Higher Education 1945, Board of Trustees, Institutions of Higher Learning of Mississippi*, Joseph E. Gibson, Director, pp. 72-74.

[48] E-0-20 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi for the Scholastic Years 1953-54 and 1954-55*, pp. 102, 106.

[49] E-0-51 *Public Education in Mississippi: Reports of Advisory Study Groups (Volume II) Institutions of Higher Learning to the Legislature Education Study Committee, 1961*, p. 26.

[fol. 963] 3. A much wider variety of courses and degrees are offered to the white than to the Negro college students of Mississippi in 1960-61.[50]

White

University of Mississippi

College of Liberal Arts Offers:

a. Bachelor of Arts degree in 24 fields
b. Bachelor of Science in 5 fields
c. Bachelor of Music
d. Bachelor of Fine Arts

School of Engineering Offers:

Bachelor's degree in 5 fields

School of Education Offers:

a. Bachelor's degree in 3 fields
b. Special programs of study in 5 areas

School of Commerce and Business Administration Offers:

a. Bachelor of Business Administration
b. Bachelor of Public Administration
c. Bachelor of Science in Journalism
d. Bachelor of Science in Commerce

Mississippi State University

School of Arts and Sciences offers training in about 16 fields
School of Agriculture composed of 9 departments
School of Education composed of 5 departments

Mississippi Southern College

School of Education
School of Arts and Sciences
School of Commerce and Business Administration
Division of Fine Arts
Division of Home Economics

Negro

Jackson State College

Offers the Bachelor of Science and the Bachelor of Arts degrees in 11 fields and provides preprofessional preparation in 5 fields.

Alcorn A.&M. College

Offers the Bachelor of Science degree in about 20 fields.

Mississippi Vocational College

Offers the Bachelor of Science degree in 12 fields.

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[50] E-0-51 *Public Education in Mississippi: Reports of Advisory Study Groups (Vol. II) Institutions of Higher Learning 1961,* pp. 71-75.

[fol. 964]

White	Negro
Mississippi state college for Women Offers 5 Bachelor degrees in 19 fields	
Delta State College Offers Bachelor degrees in 10 fields	

4. Until September 1962 white students in Mississippi had graduate and professional schools and Negro students did not.[51]

White	Negro
University of Mississippi School of Law School of Medicine School of Pharmacy School of Nursing Graduate School offers: a. Master's degree in more than 30 fields b. Doctor of Philosophy degree in 7 fields	Jackson State College The Division of Graduate Studies offers a Master of Science in Education degree for principals and supervisors only.
Mississippi State University 5 Professional Schools Graduate School offers: a. Master's degree in about 30 fields b. Doctor of Philosophy degree in 5 fields	
Mississippi Southern College Graduate School offers: a. Master's degree in 12 fields b. Doctor of Philosophy and Doctor of Education degrees in about 7 fields	

[51] E-0-51. *Public Education in Mississippi: Reports of Advisory Study Groups (Volume II) Institutions of Higher Learning 1961*, pp. 71-74.

[fol. 965] 5. Mississippi's public institutions of higher learning granted more degrees and in a greater variety of fields in 1959-61 to white students than to Negro students.[52]

	Bachelors	Masters	Doctors	Fields of Learning
White	5,584	1,480	16	43
Negro	1,420	10	0	12

E. The State of Mississippi Has Always Recognized That the Public Education Provided for Negroes Has Been Inferior to That Provided for Whites.

1. Officers of the State Government have recognized that the public educational facilities provided for Negroes were inferior to those provided for whites.

a. Governor Vardaman (1907).

Here is what I promised to do. I said if you elect me Governor and elect a legislature in sympathy with me that I would submit to the people of Mississippi an amendment to the State Constitution which would control the distribution of a public school fund so as to stop the useless expenditure in the black counties.

Let's see whether I kept my promise. In my inaugural address, I devoted the greater part of it to that. The only time I ever got a chance to urge against Negro education as I wanted to without impairing the white schools was when a legislature passed a bill providing money to that Negro school in Holly Springs which was sent to me signed by the President of the Senate and the Speaker of the House. Did I sign it? No. I killed the bill and I killed the school. . . .[53]

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[52] E-0-50 *Biennial Report of the Board of Trustees of State Institutions of Higher Learning from 1959 to 1961 to the State Legislature, State of Mississippi*, p. 18.

[53] E-0-78 Speech of Governor Vardaman of Mississippi quoted in the Jackson Mississippi *Daily Clarion-Ledger*, July 11, 1907.

b. Governor Wright (1950).

We face a serious problem in the matter of providing comparable educational opportunities for the two races in our State. As a matter of fact, this problem is composed of several phases. One of them deals with salary adjustments. A plan was proposed and submitted to the teachers this past summer. They voted it down. It is now necessary to prepare another plan, [fol. 966] and I understand that a great amount of study has been given to this by the members of the Mississippi Education Association, the Association of County Superintendents, and the State Department of Education. Proposals will be submitted to the Legislature in due time embracing the principles subscribed to by these groups.

Another phase of this problem deals with transportation, and another with building facilities. In fact, in order to accomplish some of the objectives to which our attention and efforts must be directed, we may have to reshape our plans and reform our thinking in order that all of the children of all of the people may have the opportunity to develop their abilities to the maximum.

I recommend that legislation be enacted providing for the equalization of teachers' salaries based upon qualifications, and removing any discrimination as between the races.

Second, I urge that a program be enacted providing for equal facilities between the races recognizing that children of both races are entitled to equal opportunities, but I will insist, as I believe the thinking people of both races in the State would insist, that this program provide for segregated educational facilities.[54]

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[54] E-0-79 *Message by Governor Fielding L. Wright to the Joint Session Mississippi Legislature,* January 3, 1950.

c. Governor White (1953).

It is true that there is a wide variation in educational opportunities between the races.[55]

2. Every two years the State Superintendent of Public Education in Mississippi reports to the Mississippi legislature. Every such report transmitted to the legislature has shown that the public education provided for Negroes has been inferior to that provided for whites.

Following are excerpts from some of these biennial reports:

In many counties, particularly in rural areas, negro children are forced to attend school in mere shacks or in church houses. . . .[56]

[fol. 967] Consolidation has done away with practically all of the one and two-teacher schools. In fact, this year there are less than ten percent of the white children of the rural districts attending these old type schools. The other ninety percent have the advantage of modern high schools, in many of which, not only the college preparatory course is given but also work in vocational agriculture, home economics and business training. . . .

E-0-7 *Biennial Report 1929-31*, p. 11.

83 percent of all colored children enrolled in school were in open country rural schools, the great majority of which were of the one and two teacher type so

[55] E-0-80 Message from Governor White to the Senate of Mississippi—1953 Extraordinary Session *Senate Journal*, p. 970.

[56] The full title of this document is *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi for the Scholastic Years 1929-30 and 1930-31*, p. 45—E-0-7. Hereafter, all such reports will be referred to as Biennial Report for the particular years covered therein.

> common in Mississippi in both races prior to 1910.[57] 98.3 percent of all children in schools for the colored race were in grades one to eight inclusive, and 1.7 percent in grades nine to twelve. The great majority of colored children never get beyond the sixth grade.
>
> E-0-8 *Twenty Years Progress*, p. 130.

It was reported that a factor in the disbursement of the state per capita fund which creates and magnifies inequality in financial support is:

> The fact that we spend less money in Mississippi per child in the schools for the negro race than in the schools for the white race. The ratio between the amount per child for the white race and for the negro race among the counties ranges from two to one in some counties to more than ten to one in other counties. In counties with large negro population and small white population the state per capita fund provides a larger part of the actual school expenditures than in counties with large white population and small negro population. . . . Consequently, inequalities from state sources are magnified by the per capita school census basis for disbursement.
>
> E-0-8 *Twenty Years Progress*, p. 107.

[fol. 968] In spite of the fact that about fifty-four percent of the total educable population of the state is negroes, there is only one higher institutions of learning maintained by state support. This is Alcorn College at Alcorn, Mississippi. Some of the best trained teachers in colored schools come from this institution, but obviously it is far and away from meeting the needs of the state in the business of training an adequate supply of teachers.

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[57] The full title of this document is *Twenty Years of Progress 1910-1930 and A Biennial Survey Scholastic Years 1929-30 and 1930-31 of Public Education in Mississippi*, issued by W. F. Bond, State Superintendent of Education, p. 121—E-0-8. Hereafter, all such reports will be referred to as *Twenty Years' Progress*.

E-0-8 *Twenty Years' Progress*, p. 24.

The quality of work done in the school room by the majority of negro teachers would not rank very high when measured by any acceptable minimum known to the leaders in educational thought. There is a growing sentiment among the white people and the negroes in Mississippi favorable to improvement in school plants, in the training of negro teachers which will guarantee a better quality of work in the school-rooms for the negro race.

E-0-8 *Twenty Years' Progress*, p. 90.

The [Negro] teaching force, numbering 5,863 teachers has an average of 50 enrolled pupils each. This average situation is rarely ever found, for teachers in the lower grades frequently have in their charge from seventy-five to one hundred and fifty pupils. In a great many cases these teachers are forced to teach double sessions each day—one group in the forenoon and a totally different group in the afternoon. . . . Of the 3,753 Negro schoolhouses in Mississippi, 2,313 are owned by public school authorities. The other 1,440 schools are conducted in churches, lodges, old stores, tenant houses, or whatever building is available. Last winter, with the aid of the CWA, a considerable number of the best buildings were repaired. Up to the present time there has been only one PWA Negro school project. It is a farm shop building at the Hopewell School in Covington County. One of the great difficulties in getting Federal aid for these buildings is the lack of local funds for meeting the requirements of the government. The Negroes themselves, in some cases, are building and repairing their schoolhouses out of their own meager savings and with their own labor.

[fol. 969] School buildings need to be erected to displace the many little shanties and churches now being used. . . .

E-0-10 *Biennial Report 1933-35*, p. 41.

There is also dire need for school furniture and teaching materials—comfortable seating facilities, stoves, blackboards, erasers, crayon, supplementary reading materials, maps, flash cards, and charts.

In many of the 3,763 colored schools of the State there is not a decent specimen of anyone of the above mentioned items. In hundreds of rural schools there are just four blank, unpainted walls, a few old rickety benches, an old stove propped up on brickbats, and two or three boards nailed together and painted black for a blackboard. In many cases, this constitutes the sum total of the furniture and teaching equipment.

E-0-10 *Biennial Report 1933-35*, p. 41.

High school advantages for Negroes in Mississippi are very meager. Ninety-four percent of the educable Negro population of high school age is not in school. . . . There are twenty-eight counties in Mississippi which do not have nay recognized high school facilities for Negroes. Fifteen counties make absolutely no provision whatever for high school training of Negro children. Of the fifty-four recognized four-year high schools for Negroes fifteen are privately owned and supported. . . . Only eighteen Negro high schools in Mississippi have been given any recognition by the State High School Accrediting Association. Three Negro high schools are accredited by the Southern Association of Colleges and Secondary Schools. . . .

E-0-11 *Biennial Report 1935-37*, p. 13.

Of course, everyone knows that there is a long distance to go yet before an adequate system for the training of the colored youth of the state can be provided; yet it should be said that there is more interest in this question and that definite progress is now being made. . . . The most urgent need in the field of Negro education is for trained teachers. Without trained teachers, any worthwhile educational program is impossible. The facilities for training teachers, both public and private, now available are wholly inadequate. . . .

E-0-11 *Biennial Report 1935-37*, p. 15.

Of course, everyone knows that there is a long distance to go yet before an adequate system for the training of the colored youth of the state can be provided; yet, it should be said that there is more interest in this question and that definite progress is now being made.

E-0-12 *Biennial Report 1937-39*, p. 18.

[fol. 970] *Negro Salaries.* At the beginning of the biennium, the State Board of Education set up a salary schedule of $28 per month for a six months term, or a total of $170.00 per year per teacher. In some counties, however, the salaries have averaged less than this amount. It is obvious that the salary problem is one of our real problems in the colored schools in Mississippi. Teachers cannot live on this small salary and maintain any sort of decent standard of living. Many teachers have dependants, and the small salaries and short terms make it compulsory that they earn a part of their living by engaging in some other type of work, usually farming or domestic service. As a consequence, many of our best teachers have gone into other sections of the country or into other lines of work where remuneration is more liberal.

E-0-12 *Biennial Report 1937-39*, p. 16.

. . . 99.7% of the white children had the opportunity to attend eight months the past session. . . .
During the past biennium improvement was made in the length of school terms for [Negro] rural schools. In most of the counties the term ran for six months, but in a few counties the term was four or five months. The term in separate districts was eight or nine months. In an effort to maintain longer school terms in rural areas, colored patrons frequently provide funds from their own meager resources for this purpose.

E-0-12 *Biennial Report 1937-39*, pp. 9, 16.

It is felt very definitely that the Negro schools in Mississippi are now on the upgrade. Of course, everyone knows there is a long distance to go yet before an ade-

quate system for the training of the Negro youth of the state can be provided; yet, it should be said that there is more interest in this question and that definite progress is now being made.

E-0-13 *Biennial Report 1939-41*, p. 18.

There are 3,737 Negro schools in Mississippi. Of this number approximately 1,500 are housed in churches, tenant houses, or any other type of building available. One of the most pressing needs in Mississippi today is provision either by the state, by the county, or by both, of funds to revamp Negro schoolhouses. A few counties have put on county levies for this purpose; but this has been a very slow process. Schoolhouses need not be elaborate, but they should at least be sanitary, comfortable and adequate.

E-0-15 *Biennial Report 1943-45*, pp. 21-22.

[fol. 971] There are 3,345 Negro public schools in Mississippi. Nearly half of these schools are housed in churches, tenant houses, or any other type of building available. In such schools the equipment is nil. . . .

E-0-16 *Biennial Report 1945-47*, p. 41.

In view of the present sociological conditions, race relations are extremely good in Mississippi. This is true largely because of mutual cooperation and understanding between the races in their attempt to equalize educational facilities. The building program is progressing very well in most counties; however, classroom needs in many cases have been under-estimated. Consequently space that has been provided for libraries and auditoriums is being used for classrooms. In many districts, the necessary amount of teaching materials and equipment is not being placed in the new buildings. Therefore, many of the new schools will not be able to meet the standards of the Mississippi Accrediting Commission. In order for good relationships to continue between the races, the people of Mississippi, both white and Negro, must work toward getting all communities to meet the responsibility of truely equalizing facilities. . . The fact that public schools for Ne-

groes have been poor in the past also has a direct bearing on the quality of instruction being done. . . .
E-0-21 *Biennial Report 1955-57*, pp. 40, 41.

Recommendations

The most important immediate needs in regard to Negro education are as follows:

Continued work toward equal facilities. In view of the present sociological conditions, race relations are extremely good in Mississippi. This is true largely because of mutual cooperation and understanding between the races in their attempt to equalize educational facilities. The building program is progressing very well in most counties; however, classroom needs, in many cases, have been underestimated. Consequently, space that has been provided for libraries and auditoriums is being used for classrooms. In many districts, the necessary amount of teaching materials and equipment is not being placed in the new buildings; therefore, many of the new schools will not be able to meet the standards of the Mississippi Accrediting Commission. In order for good relationships to continue between the races, the people of Mississippi, both white and Negro, must work toward getting all communities to meet the responsibility of truly equalizing facilities.

Graduate training for teachers. The principals' training program at Jackson State College is the only graduate work available to Negro school people in Mississippi, and this program is limited to a small number of principals and supervisors. In order for [fol. 972] Negro teachers to further their education beyond the bachelor's degree, it is necessary for them to leave the State.

Since there is such a great demand on the part of Negro teachers for advanced college work, it seems particularly desirable that graduate training for principals, elementary and high school teachers be provided by Mississippi Negro institutions. Considering the large number of Negro teachers desiring graduate training and the wholesome influence of such training on the schools of Mississippi, it is highly probable that

this training could be provided on a more economical basis than adequate out-of-state tuition. Certainly, the quality and type of training provided by our own state institutions would more nearly meet the needs of Mississippi schools. Of course, out-of-state tuition will continue to be necessary for those students desiring to study in fields other than the teaching profession.

Negro person to work with Negro elementary schools. Since the Southern Education Foundation is no longer financially able to contribute to the support of a special consultant in Negro elementary education, a Negro person who is well qualified in elementary education and who has demonstrated his ability to work with both white and Negro people should be employed by the State as an assistant to the coordinator of Negro education. Such a person is needed because: (1) There is a great need for additional state leadership in Negro elementary education, (2) Many elementary teachers are not fully qualified and need guidance and direction, (3) Better interpretation of Negro elementary school needs can be effected through the work and advice of a well-qualified Negro person, (4) The employment of such a person will do much to instill confidence between the races, (5) A good Negro person can work effectively with Negro elementary teachers because of mutual understandings.

Local supervision of classroom teaching. For approximately 50 years the Southern Education Foundation has contributed financially to the support of supervision in the Negro schools of the South. Through the years the Foundation has gradually withdrawn its support from this program. At present, the various counties receive very little assistance. If this important service is to be continued, it will be necessary for the State to assume a greater financial responsibility for its support. The need for supervision in instruction is obvious when it is realized that only sixty-three per cent of the Negro teachers in Mississippi hold an "A" class teachers' certificate. The fact that public schools for Negroes have been poor in the past also has a direct bearing on the quality of instruction being done. If the state of Mississippi is to receive just value in

return for money expended for teachers' salaries, supervision of instruction is a necessity.

E-0-22 *Biennial Report 1957-59*, pp. 40, 41.

[fol. 973] I strongly recommend that sufficient funds be budgeted during the next biennium to allow equal amounts to be allocated according to the density formulas for Negro and white transportation. Our best estimates indicate that approximately $1,200,000 annually would be needed to close the gap that now exists between white and Negro allocations.

E-0-23 *Biennial Report 1959-61*, p. 23.

There was also a serious shortage of textbooks in some of the Negro schools.

E-0-23 *Biennial Report 1959-61*, p. 138.

There is also a *critical* need for a State Supervisor of Elementary Education for Negro Schools.

E-0-23 *Biennial Report 1959-61*, p. 155.

3. Special studies of education in Mississippi have been authorized at various times by the Mississippi Legislature, by the State Superintendent of Public Schools and by other public educational authorities in Mississippi. These studies have shown that the education provided for Negroes is inferior to that provided for whites in Mississippi.

Following are excerpts from some of these studies:

The buildings are usually poorly planned. Often churches are used for school purposes and are not adapted to instructional needs. In many instances the buildings are not well kept. . . .

In most of the rural schools, the desks are poor, not adjusted to the children, often double and perhaps in one-half the cases no desks at all. Usually in churches the benches are used for seats. . . .

The blackboards are entirely inadequate, often painted boards and in many cases oil cloth stretched along the walls are the makeshifts for blackboards. Most frequently, the amount of blackboard space is

entirely inadequate. Usually, there are no erasers. It is hard to imagine how any work at all can be done under such conditions.

E-0-37 *A Report of the Committee of Investigation of the Teacher Training Facilities for Negroes in Mississippi,* Bulletin No. 61 (1930) State of Mississippi Department of Education, p. 12.

In view of the fact that only approximately thirty-two four-year high schools for Negroes, half of which number are privately maintained, are to be found in the entire state of Mississippi, it naturally follows that the actual need for college buildings is not extensive. . . .

E-0-37 *A Report of the Committee of Investigation of the Teacher Training Facilities for Negroes in Mississippi,* Bulletin No. 61 (1930) State of Mississippi Department of Education, p. 29.

[fol. 974] Although the State has made noticeable strides during the past decade in the education of its Negro citizens on all levels, the goal of equality is still very distant. Action is already under way to hasten progress. . . .

The quantity and quality of higher education is so inextricably bound to that on the lower level, particularly the secondary level, that it is not possible to consider inequalities in higher education at the exclusion of others. Opportunities for the Negro youth to get the basic secondary school training necessary for college admission have been considerably less than for the white youth of the State.

E-0-46 *Higher Education in Mississippi: A Survey Report to the Board of Trustees, Institutions of Higher Learning (1954),* John B. Brewton, Director, p. 146.

Even greater inequalities exist in the area of higher education. . . . The State provides, through the University of Mississippi and other state colleges, ample opportunities for white students to pursue graduate and professional study; but the Negro student has been compelled to go outside the State for this service.

. . . These inequalities in opportunities contribute to the scarcity of Negroes in the professions.

E-0-46 *Higher Education in Mississippi: A Survey Report to the Board of Trustees, Institutions of Higher Learning (1954)*, John E. Brewton, Director, pp. 148, 149.

Curricular offerings in areas considered to be urgent for national defense have not kept pace with such demands in the Mississippi high schools for Negroes. Less than five per cent of the high schools offered courses in modern foreign languages. Areas of critical shortage in the teaching personnel were modern languages, speech, physics, and chemistry. The situation is more acute due to the fact that opportunities for training teachers in such fields are limited at the undergraduate level and totally unavailable to the teaching force within the state at the graduate level.

E-0-41 *Public Education in Mississippi: Report of Mississippi Legislative Education Study Committee December, 1961*, p. 118.

Findings in this study indicate that higher education for Negroes in Mississippi is handicapped by restricted budgets and curricular offerings. Major emphasis in the past has been concerned with serving the needs of rural Mississippi. The schools now face the problems of expanding their programs to include more course offerings for pre-professional and professional students. . . .

E-0-41 *Public Education in Mississippi: Report of Mississippi Legislative Education Study Committee December, 1961*, p. 121.

[fol. 975] Enrollments in both [Negro] junior and senior colleges have grown steadily over the past ten year period. Although budgets for higher education are still inadequate, they, too, have shown steadily increases; however, the increases have not been sufficient to cope with the increasing enrollment and expanding curricular offerings, and higher cost of living.

E-0-41 *Public Education in Mississippi: Report of Mississippi Legislative Education Study Committee December, 1961*, p. 122.

The Legislature and the Board should give considerable emphasis to providing Jackson, Alcorn, and Mississippi Vocational College with the funds and assistance needed to qualify them for full membership in the Southern Association of Colleges and Secondary Schools. Colleges presently admitting Negro students are in a difficult position, since the Southern Association of Colleges and Secondary Schools has discontinued the separate accrediting of colleges admitting only Negro students, and is applying its regular standards to such colleges.

E-0-41 *Public Education in Mississippi: Report of Mississippi Legislative Education Study Committee December, 1961*, p. 102.

. . . With the exception of the work toward a Master's degree for principals and supervisors at Jackson State College, no graduate work is at present available to Negro students within the state. This is a severe unmet need, which cannot be satisfied even by building another institution. The costs would be overwhelming, and the difficulties of gathering a satisfactory faculty almost insuperable.

E-0-51 *Public Education in Mississippi: Report of Advisory Study Groups (Volume II) Institutions of Higher Learning, 1961*, pp. 78, 79.

Special School Surveys

In 1949 a study was made of the educational provisions for Negro children in Sunflower County. In the same year a study was made of education in both the white and Negro schools of the Holly Springs Separate School District, Holly Springs, Mississippi. Following are excerpts from these studies.

[fol. 976] **The Education of Negroes in Sunflower County**

Introduction

In February 1949, an inter-racial Citizens Committee was formed in Sunflower County to investigate the education of Negro children in that county. The Citizens Committee selected the Bureau of Educational Research, School of Education, University of Mississippi, to conduct the study. The results of the study were published by that Bureau in March 1950 under the title, *The Report of a Study of the Education for Negroes in Sunflower County, Mississippi* (Bureau of Educational Research, School of Education, University of Mississippi: March 1950).

This report began by discussing a similar study conducted in Sunflower County in 1936-37 which had recommended, among other things, that 81 out of 105 Negro schools in the county be abandoned and had stated:

> This recommendation is made in the light of the following facts: the colored schools of Sunflower County as they now exist, are in deplorable condition; the schools that are now being used are not owned by the County Board of Education; many of the schools that the Committee recommends to be retained are in need of repairs; there is a decided lack of equipment in the schools; and finally this program will enable the County to give to its colored population the needed facilities for carrying on a worthwhile education program. Ray L. Hamon and Ullin W. Leavell, *Sunflower County Survey* 1936-37. (A typewritten report), p. 62, quoted in the *1950 Report* at pp. 8-9.

This was 1936-37. In 1950, the Bureau of Educational Research said:

> It is evident as far as the educational facilities for Negroes is concerned, that practically none of the recommendations made in the 1936-37 survey have been followed.
>
> *1950 Report*, p. 9.

[fol. 977] The Bureau studied all phases of Negro education in Sunflower County and made recommendations for its improvement.

The Instructional Program

Elementary Schools. With such a large proportion of the schools being one and two teacher schools, being inadequately housed and poorly equipped, running short terms with poor attendance during a large part of the time, having a large pupil-per-teacher ratio, and having inadequately trained and poorly paid teachers—the instructional program would naturally be inadequate. . .

1950 Report, p. 10.

High Schools. High school education is, at present, available only to a rather small proportion of Negro boys and girls of Sunflower County. . . . In the high schools, as in the elementary schools, progress is handicapped by inadequate housing, insufficient instructional materials, supplies, and equipment, large classes, poor attendance, and other factors mentioned earlier in this report. Furthermore, good high school education is built on the foundation of good elementary education.

1950 Report, p. 22.

Pupils in the Schools

Of the 7709 Negro children enrolled [in December 1949], the following facts seem of real significance: 32 per cent in grade 1; 70 per cent in grades 1-4; 86 per cent in grades 1-6; 2 per cent in grades 10-12. Obviously with a grade distribution indicated above . . . most Negro boys and girls in Sunflower County are not securing a very extensive education.

1950 Report, p. 39.

The Bureau gave a sampling of Sunflower Negro children the Metropolitan Achievement Test. This test was chosen because nationwide norms had been established for both white and Negro pupils.

The Bureau stated that the children tested were "under severe handicaps".

> . . . In very few instances were there enough desks. Most of the children were obliged to sit on benches and work closely together at a table. Thus, it was impossible to prevent copying. In some instances, pupils sat on the floor and did their work. . .
>
> *1950 Report*, p. 44.

[fol. 978] According to the Bureau, the tests showed:

> . . . On the average, the Negro children tested in grades 3-8 were two whole grades behind the white norms. This statement seems even more dismal when it is known that these Negro children who were two grades behind also are two years, three months older than the children on whom the norms were established . . . It will be noted that compared with the Negro norms the pupils tested scored only one grade two months below the Negro norms. Still they were one year seven months older than the Negroes on whom the norm was based. This is a pretty bad picture.
>
> *1950 Report, pp.* 50, 53.

The Bureau points out that the Negro norm was established on the basis of other Negro children in the south (p. 42) and that each successively higher grade tended to show a greater gap between the educational attainments of the Negro children, of Sunflower County, tested and the norms, (p. 56)

Negro Teachers in Sunflower County

Unprepared teachers tend to teach as they were taught. If half of the teachers in Sunflower County who had completed the twelfth grade or less, attended schools as inadequate as are the Sunflower County Schools for Negroes, then we have a vicious cycle. In this cycle children are taught in poor schools by poorly prepared teachers; these children in turn become teachers, unprepared as they are, for other children.

It is the opinion of this study staff that, by and large the schools for Negroes in Sunflower County are not good schools. Under the conditions described above the schools for Negroes will never be good schools.

1950 Report, pp. 58, 60.

The kind of teachers a school system may secure depends to a large extent on the amount of salaries they receive. . . . Salaries for Negro teachers in Sunflower County and in the State of Mississippi generally, are miserably low. . . .

1950 Report, p. 66.

Negro School Plant and Plan for Improvement

The Bureau pointed out that Negro children in Sunflower County are attending school in 94 different places. They recommend that these small school units be abandoned and that "a good modern school program should be started [fol. 979] for the Negroes of Sunflower County". (p. 79) They recommend the establishment of eight elementary centers and two high school centers. (p. 79)

The Bureau points out that this could be done without financial loss.

From the point of view that the school plant is an educational tool, the present holdings of Sunflower schools present a dreary spectacle. Over-crowded classrooms are a definite handicap to instruction in the finest and best equipped schools. When the buildings are below acceptable standards and equipment is inferior in quality and in quantity, every phase of a sound educational program fails to function.

In one respect, at least, Sunflower County may be fortunate. Since with the exception of three situations in the separate school districts, there is little capital investment and since, in these three, there is only a limited amount, the county is in the position to develop a school plant which is not tied to present structures. Most of the present school plants may be abandoned or sold without undue financial loss. . .

1950 Report, p. 89.

Financing Negro Schools

In the past, expenditures for schools for Negroes in Sunflower County have been woefully low. This has been true also for most of the counties and separate school districts in Mississippi. There are several reasons for the low expenditures for Negro education. Most of these reasons have their origin in the period when many white people thought that a Negro should not be educated. Today, the white people in Mississippi who see the immediate need for the education of Negroes find themselves tied down by laws and traditions to such an extent that progress can be made only by unceasing and tremendous effort.

1950 Report, p. 101.

As was stated before, half of the state disbursements for school purposes are made on a per capita basis. Nothing in the law states that this money must be spent for the schools of either race according to the number of educable children. However, since the state pays the money on a per child basis, it as least may be inferred that the state money should be spent on the child who was responsible for the payment.

In Sunflower County schools, as well as many other school districts in Mississippi, this is not the case. The amount of money received by the county from the state because of the Negroes exceeds the amount spent for "instruction" of the Negroes. . .

1950 Report. p. 126-127.

[fol. 980] . . . in 1939-40 the county received from the state $6.96 per enrolled Negro pupil but spent only $4.26. The per capita amount received in each of the following ten years was, in every year, more than the per capita expenditure. .

1950 Report. p. 134-135.

. . . Sunflower County in 1939-40 received $73,626 per capita fund. Since 79 per cent of the educables at that time were Negro, $58,165 was the amount received on the basis of the Negro children. However, only $35,564 was spent

for "instruction" for the Negro children. Evidently $22,601 of this amount was expended elsewhere—probably on the schools for the whites. In the last two years the difference in the amount received and the amount [not spent for Negro children] is more than twice the $22,601 figure.

1950 Report, pp. 126-127.

(E-12-1 Survey published in March 1950 by the Bureau of Educational Research, School of Education, University of Mississippi, under the direction of Dr. John E. Phay)

[fol. 981] Introduction

In 1949 a study of the Holly Springs Separate School District was made at the request of the Board of Education and the Superintendent of Schools of that district. This study was made by the School Study Staff of the School of Education, University of Mississippi under the direction of Dr. John E. Phay.

Negro Elementary School

It is difficult to write anything about the curriculum of this school. The program is so limited, the physical conditions are so inadequate, the pupils per teacher load is so heavy, the materials of instruction are so meager, being limited to a few almost worn-out textbooks and a few materials that the teachers have gathered together, that any attempt to describe the program becomes lost in the mass of needs of this large group of boys and girls. (p. 17)

Negro High School

The high school provides classes through the tenth grade only. The principal carries on classes in arithmetic, english, social studies, general science, and perhaps some other subjects. The conditions under which he and the boys and girls work are abominable. He teaches his classes in one corner of an assembly hall while the rest of the room is full of very small children. There are practically no materials and supplies with which to work except a few almost worn-out textbooks. (p. 19)

Teachers' Salaries

The present salaries in Holly Springs white schools range from $1760 to $1980 for classroom teachers with the average being $1823. (p. 49)

The current salary scale for the Negro teachers in the Holly Springs School District has a range from $420 for one . . . teacher . . . to $880 which is paid to six teachers . . . The average salary paid Negro teachers, exclusive of the salary of the principal in the Holly Springs District is $550. (p. 60)

Negro School Buildings

Except for the Rosenwald school, all Negro schools are housed in one room frame buildings. Except for a rather questionable shelter from the weather, they interfere with, rather than aid, the teaching and the learning process. Water supply is usually far removed from the building and the unsanitary water bucket is always evident. Toilets are either wooden shacks, or the adjacent woods. Natural [fol. 982] lighting is usually poor, no artificial light is available. Equipment is not worthy of the name. . . (p. 68)

Per Capita Cost

. . . In 1948-49 . . . there was budgeted $107.37 for each white boy and girl. This compares with $45.00 spent per child in 1940-41. . . The per capita cost for the education of Negro boys and girls in Holly Springs is exceedingly low. . . the cost in 1940-41 was $5.95 per enrolled pupil. The cost increased each year until the budgeted amount for 1948-49 was $17.96 each. . . (p. 87)

(E-18-1 The Report of a Study of The Holly Spring Separate School District by Dr. John E. Phay, Director of School Study Staff, School of Education University of Mississippi 1949.)

[fol. 983] 4. The surveys of schools in Mississippi required by the Legislature of the State of Mississippi and the State Educational Finance Commission conducted in the mid-1950's show that the education provided for Negroes has been inferior to that provided for whites.

The special session of the Mississippi legislature convened in 1953 passed a law requiring each county and separate school district to have a survey of the educational facilities in that county made for the purpose of equalizing all schools in the district. All presently existing districts were abolished and each district was required to have a plan prepared for its reorganization prior to July 1, 1957. At this session of the legislature, the State Educational Finance Commission was also created as an organization to insure and provide substantial equality of educational opportunities through the maintenance of a uniform system of free public schools. The Commission was also charged with the responsibility of bringing about desirable consolidation or reconsolidation of school districts in Mississippi.

The Commission established criteria for school district reorganization as guides to county boards of education and to school district trustees in carrying out the purpose of the legislative acts of this session. One of the requirements was that a survey of each county and school district had to be prepared by one of the institutions of higher learning of the State of Mississippi, the State Department of Mississippi, or a survey agency approved by the Finance Commission.

Among the agencies approved by the State Educational Finance Commission for making school surveys in the State of Mississippi for this purpose were the following:

[fol. 984] Dr. John E. Phay, Director
Bureau of Educational Research
University of Mississippi
University, Mississippi

Dr. Ralph S. Owings
Head and Professor of Educational
Administration
Mississippi Southern College
Hattiesburg, Mississippi.[58]

The following are excerpts from the survey reports prepared by the above two agencies for submission to the Educational Finance Commission:

[fol. 985] Adams County and City of Natchez

School Plant

Adams County has 30 schools for negroes outside the city of Natchez. Of the 30, 9 are housed in churches, 11 in school buildings, 8 in society halls and the remainder in combinations of buildings. The site is publicly owned in only three instances. . . . The condition of the buildings that house the negro children in the county outside Natchez is one that needs immediate attention. There are only two buildings that are considered adequate for future use as schools. . . . (p. 77)

Enrollment and Average Daily Attendance

In 1954-55 the Adams County school enrollment was 844 for white schools and 1,368 for Negro schools. The average attendance was 807 for white students and 1,227 for Negro students. There were 129 white high school students and no Negro high school students.

School enrollment figures for the city of Natchez show that the total enrollment was 2,774 for whites and 2,014 for Negroes. The average attendance was 2,599 in the white schools and 1,814 in the Negro schools. There were 661 white and 451 Negro high school students in the city of Natchez in 1954-55. (pp. 15, 17, 19, 21, 33, 35, and 36)

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[58] E-0-47 *Report of the State Educational Finance Commission June 1, 1954-June 30, 1955*. Department Reports State of Mississippi, Vol. I, 1953-1955.
NOTE: All direct quotes from reports are single spaced or in quotation marks.

Two of the three white schools in Adams County outside Natchez are consolidated schools. The condition of one building is rated "good"; the other two, "poor". (p. 70) Of the six white school buildings in Natchez Separate District, two are rated "excellent"; three, "fair"; and one, "good".

One of the three Negro school buildings is rated "fair"; one, "good"; and one, "excellent". (p. 113) About the building rated "good", the report said: "The lights in the basement are totally inadequate. . . . Adequate bulletin boards are lacking in this building. Chalk boards [fol. 986] are in bad condition and require attention . . ." (p. 114)

Pupil-Teacher Ratio

The pupils per teacher ratio in white schools in Adams County is 25-1 (p. 132); in Negro schools, 34-1 (p. 136). The ratio in white schools in Natchez is 26-1 (p. 138), in Negro schools, 29-1 (p. 140).

Expenditures

The per capita amount spent for each white child in average daily attendance in Adams County was $340.26 per pupil for a nine-month term (p. 135); for each Negro child for an eight-month term, $110.92. "When this figure is contrasted with the cost of the program for whites, it shows that more than twice as much is being spent for whites". (p. 137)

Instructional Program

. . . [In the Negro elementary schools in Adams County] you find the conventional program offered. In grades 7 and 8 the program is very weak and inadequate, all the children spending a major portion of their time just sitting because the teacher has to spread her time over so many grades. These boys and girls are not getting a program of education that appears to be of too much consequence. The program offered to the Negroes is very mediocre. The listing of the offerings would not reveal anything that would prove valuable. Only the dearth of the program would be obvious. (p. 137)

The Natchez city schools are to be commended on the fact that they provide kindergartens for their negroes as

well as whites. It is one of the few school systems in the state of Mississippi that provide this type of education for negro boys and girls. . . . (p. 140)

Expenditures

In Natchez, the per capita spent for each white child in average daily attendance is $176.94; for each Negro child, [fol. 987] $134.57. "This indicates that Natchez is making an effort to equalize the program of negroes and whites". (p. 141)

(E-38-1 Survey published in 1955 by the Department of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings and Dr. Raymond M. Ainsley).

[fol. 988]

Amite County

Enrollment and Average Attendance

In 1955-56 the total enrollment for white schools was 1,940. During the same year there were 3,978 children enrolled in the Negro schools of Amite County. The average attendance was 1,794 for white schools and 2,594 for Negro schools. (pp. 11-32)

School Plant

The school buildings in Amite County range from excellent to unsatisfactory. Some should no longer be utilized for school purposes. The buildings for Negroes are most inadequate and in a deplorable condition. . . . (p. 41)

There are 7 white school buildings—all publicly owned. Two are rated "poor"; one, "excellent to poor"; one, "good to satisfactory"; one, "poor to unsatisfactory". (p. 43)

There are 32 schools for Negroes in Amite County. Without exception they are in extremely poor condition. . . . These schools are in such deplorable condition that it seems a waste of time to discuss each school plant in detail. . . . (p. 54)

Only 3 of the 32 Negro schools are publicly owned. (p. 54)

It is recommended that 13 be abandoned. (p. 55)

School Busses

. . . Amite County maintains 34 busses for white pupils and 21 for Negro pupils. . . . All but 4 of the white busses are either 1954 or 1955 models. Only 4 of the Negro busses range from 1952 to 1954 models, while the balance range from 1951 models, down to 1946 models. Older model busses (1946-1949) make it difficult to maintain safe and economic operation. . . . The largest percentage of the busses serving white pupils make only one trip daily. Table 19 shows most of the Negro busses making two trips, with one Negro bus making 3 trips. (p. 69)

Pupil-Teacher Ratio

Eighty-nine white teachers are employed with a pupil-teacher ratio of 21.9. "This ratio is much below the state average of 30 plus". (p. 82) Eighty Negro teachers are employed with a pupil teacher ratio of 37.2. "This ratio. [fol. 989] is much higher than that of the white schools. Compared with the State of Mississippi which has a 30 plus ratio it is also high". (p. 91)

Expenditures

There is a dearth of teaching materials and equipment in all the Negro schools. There is a shortage of chalk boards, bulletin boards, reading material, charts, maps, and library books. (p. 91)

The budget for 1954-55 was made on the basis of average daily attendance of 1,991 white children at $182.36 per child for 8 months. The budget for 2,423 Negro children was made at the rate of $85.68 per child in average daily attendance for 8 months. This shows that approximately twice as much is spent for each white child as for each Negro child in Amite County. This fact should be given careful consideration. (p. 97)

(E-46-1 Survey published in 1956 by the Department of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings, Head of the Department of Educational Administration.)

[fol. 990] Benton County

Enrollment and Average Daily Attendance

In January 1956, there were 1,018 white and 1,054 Negro students enrolled. Nine hundred and fifty-nine white and 710 Negro students were in average daily attendance. (pp. 23, 32)

Elementary Schools

. . . It should be noted that in the quality and quantity of housing, in the availability of instructional materials, and in general environment, the Negro elementary schools are far below those of the white schools. (p. 37)

School Plant

The report indicated that 12 of the 13 Negro attendance centers are obsolete. The high school portion of the thirteenth is obsolete. (p. 46)

Expenditures

The per pupil cost for white schools was $162 for Hickory Flat and $184 for Ashland. The per pupil cost for the Negro schools was $98. (pp. 50-51)

(E-14-1 Survey published in June 1956 by the Bureau of Educational Research, School of Education, University of Mississippi, under the direction of Dr. John E. Phay)

[fol. 991] Claiborne County and City of Port Gibson

Pupil-Teacher Ratio

The pupil teacher ratio for the white children of Claiborne County is 21 per teacher and for the Port Gibson schools 26 per teacher; whereas, the ratio of Negro pupils per teacher for the county is 33 and for Port Gibson, 40.

Expenditures

The county operates white schools for nine months and the negro schools for eight months. The budget for white children in the county is $436.40 per child in average daily attendance; whereas, the budget for the negroes is only

$100.39, and is for eight months, showing that four times as much is being spent for each white child as for each negro child in average daily attendance, and in addition, he is given an extra month. . . .

Port Gibson operates both the white and negro schools for nine months. No school should be run for less than nine months. Port Gibson budgeted on a basis of $160.02 per white child in average daily attendance, and $82.25 per negro child in average daily attendance or approximately 50 per cent less for the Negroes . . . . (p. 102)

(E-39-1 Survey published in 1955 by the Department of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings and Dr. Raymond M. Ainsley.)

[fol. 992] Clay County and City of West Point

Average Daily Attendance

In 1954-55 the average daily attendance in the schools of Clay County was 1,810 for white students and 2,297 for Negro students. (pp. 20, 30)

Pupil-Teacher Ratio

The total number of teachers for the city of West Point and Clay County was 72 for the white schools and 82 for the Negro schools. (pp. 22, 31)

Elementary Schools

. . . It should be noted that both in the quality and quantity of housing, in the availability of instructional materials and in general environment, the Negro elementary schools are below those of the white schools in their neighborhood. (p. 43)

School Plant

Two of the twenty-five Negro school buildings are rated "fair", the other twenty-three "obsolete". (pp. 56-60) Four of the seven white school buildings are rated "good", the other three "fair". (p. 52)

Expenditures

The per capita expenditure at different white schools in the county and West Point ranges from $218 to $145. The County expenditure per Negro pupil is $91; West Point spends $105. (p. 64)

(E-29-1 Survey published in May 1956 by the Bureau of Educational Research, School of Education, University of Mississippi, under the direction of Dr. John E. Phay.)

[fol. 993] Covington County

Pupil-Teacher Ratio

The white pupil-teacher ratio is 25.3-1; the Negro, 35.1-1. (pp. 70, 78)

Expenditures

The budget for the year 1954-55 reveals that Covington County budgeted for an average daily attendance of 2,383 white children at a cost of $154.53 per child. Compared to this figure is the budget for the average daily attendance of 1,219 Negro children at a cost of $122.46 per child. This budget is prepared for eight months for both white and Negro. This means that about 25 per cent more is being spent per white child than per Negro child. (p. 82)

(E-67-1 Survey published in 1956 by the Department of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings.)

[fol. 994] Forest County and City of Hattiesburg

Expenditures and General Description

According to the budget for 2,948 white children and 1,809 negro chilren in average daily attendance for the 1954-55 year, Hattiesburg has been attempting to equalize the expenditure per pupil in average daily attendance. The budget calls for an expenditure of $165.00 per white child and $110.00 per negro child. Hattiesburg operates both the negro and white schools for nine months, which indicates that effort is being made toward bringing the negro schools to the same level as to kind and type of schools as the white. However, the negro schools are overcrowded to an

extent greater than the white schools. Also, the facilities in the negro schools are not comparable to the whites.

In 1954-55, Forrest County budgeted $159.91 per child for 2,727 white children in average daily attendance and $130.00 per child for 1,036 negro children. Here again is evidence that there is an attempt to improve the situation of the negro child and bring it in line with the white. Unfortunately, however, the negro schools in the county do not run for nine months. All of them run for eight months only. Some of the white schools run for only eight months, but others run for nine. All schools should run a minimum of nine months, both white and negro. (pp. 167-168)

(E-68-1 Survey published in 1955 by the Department of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings and Dr. Raymond M. Ainsley)

[fol. 995] Franklin County

Expenditures

The proposed budget for 1954-55 indicates that Franklin County budgeted for 1,392 white children in average daily attendance for eight months at a cost of $175.62 per child. It also budgeted for 898 Negroes in average daily attendance for eight months at a cost of $110.28 per child. Franklin County is spending a little better than 50 per cent more on its white children than it is on its Negroes. (p. 74)

(E-48-1 Survey published in 1955 by the Department of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings.)

[fol. 996] George County

School Plant

The school buildings in the county cover a wide range from poor to excellent. Some of the buildings are poorly adapted to educational needs. The Negro buildings are most inadequate and in a deplorable condition. . . (p. 39) It is quite evident from examination of the pictures of the schools that the Negro situation is pathetic. . . (p. 55)

Pupil-Teacher Ratio

The white pupils per teacher ratio is 30.5-1; the Negro, 36.9-1. (pp. 68, 76)

Expenditures

The budget for 1954-55 was made on the basis of average daily attendance of 2,472 white children at $158.78 per child for eight months. The budget for 353 Negro children was made at the rate of $106.75 per child in average daily attendance for eight months. This shows that approximately 50 per cent more is being spent on each white child than on each Negro child in George County. This fact should be given careful consideration. (p. 78)

(E-77-1 Survey published in 1956 by the Department of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings.)

[fol. 997] Greene County

Pupil-Teacher Ratio

The white pupils per teacher ratio is 26.1-1; the Negro, 32.4-1. (pp. 70, 76)

Expenditures

The budget for the year 1954 reveals that Greene County budgeted for an average daily attendance of 1,980 white children at a cost of $166.86 per child for 8 months. Compared to this figure is the budget for the average daily attendance of 583 Negroes at a cost of $97.51 per child. This means that the county is spending approximately twice as much on the white child as on the Negro. (p. 80)

(E-69-1 Survey published in 1956 by the Department of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings.)

[fol. 998] Grenada Count and City of Grenada

Pupil-Teacher Ratio

1,840 white children in average daily attendance in 1955-56 were taught by 78 teachers; 2,076 Negro children in average daily attendance were taught by 74 teachers. (pp. 20, 28)

$146.00 was spent for each white child in average daily attendance in Grenada City schools; $174 in one county white school and $249 in the other. The expenditure per child for county Negroes was $103, for city Negroes $90. (p. 56)

(E-16-1 Survey published in July 1956 by the Bureau of Educational Research, School of Education, University of Mississippi, under the direction of Dr. John E. Phay.)

[fol. 999] Holmes County and Cities of Durant & Lexington

Pupil-Teacher Ratio

There were 1780 white children in average daily attendance in the entire county. The white pupil-teacher ratio was 17-1 in Holmes County, 18-1 in Lexington, and 20-1 in Durant. (p. 19, 23) There were 5396 Negro pupils in average daily attendance. The Negro pupil-teacher ratio was 30-1. (pp. 37 and 39)

School Plant and Instructional Program

. . . no sound educational program for elementary Negro children can be established until extensive replacements and additions are made to the present school plants. (p. 66) In most instances the Negro high schools have too many oversized classes. This seriously interferes with a sound instructional program. As in the Negro elementary school curriculum, the school plant is a major factor in limiting the school program. Library facilities, laboratory equipment, and other teaching devices also are limited. (p. 69)

. . . except for the Mileston plant and the one at West the County must provide new plants for Negro education. [The survey recommends that over 60 other Negro schools be abandoned. (p. 78)] Although it is unfortunate better school buildings have not been provided in the past, it is fortunate that new buildings can now be built at the most desirable locations. Little capital loss will be sustained by abandoning the school plant as recommended in this study. (p. 81)

Expenditures

In 1954-55, Durant spent $191 for each white child in average daily attendance; Lexington spent $265; the county expense for white pupils ranged from $306 to $152, depending on the school attended. Holmes County, at the same time, spent $78 on each Negro child; Lexington, $72; and Durant, $63. (pp. 86-89)

(E-50-1 Survey published in June 1956 by the Bureau of Educational Research, University of Mississippi, under the direction of Dr. John E. Phay.)

[fol. 1000]

Jackson County

General Description

Jackson County has 7 white schools. Grades 1-12 are taught in three of these: St. Martin, Vancleave, and Wade. Grades 1-8 are taught in the other schools.

All the schools operate for eight months. Table 60 shows that enrollment for the current year is 2,132 pupils with 71 teachers employed or a teacher-pupil ratio of 31.4. This ratio is above the state average of 30 plus. . . . (p. 119)

Jackson County has three Negro schools. Grades 1-8 are taught in 2 of these. The other, Davis Chapel, includes grades 1-6.

All of these schools operate for eight months . . . the enrollment for this year is 196 and . . . 6 teachers are employed. The pupil-teacher ratio is 32.7 which is higher than the average in the State of Mississippi.

Since none of these schools have a high school, no course of study will be given. Generally speaking, the program of these schools needs improvement in every respect. (pp. 123-124)

(E-80-1 Survey published in 1956 by the Department of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings.)

[fol. 1001] Jefferson County

Average Daily Attendance

In the school year 1954-55 there were 551 white children in average daily attendance. There were 1717 Negro children in average daily attendance. (pp. 15, 30)

While the buildings are not the most important thing concerning the school, they are of significance. The kind and type of housing for children affect the program and also have an affect on the teachers. (p. 47)

In each of the school surveys discussed in this appendix all the school buildings in the county are described. The following are descriptions of the three white schools in Jefferson County and some of the 28 Negro schools:

It is reported that *Fayette* is a school for whites. It is a two-story brick building, located on 10 acres and owned by the public. The value of the plant is approximately $150,000. (pp. 48, 49)

Union Church is a school for white children. This was partially burned during the time of survey. The survey reported that the elementary (which was not burned) is a wooden frame building with a metal roof in poor condition. However, inside toilets are available. The shop and vocational building is in very good shape. (pp. 50, 51)

According to the survey *United Vocational* is a school for white children. The value of the plant is $60,000. The condition of this school, in general, is poor.

Ashland [a one-teacher school for Negroes, teaching grades 1-8] The windows are inadequate. It is heated by a wood stove. It has no lights and the furniture consists of chairs and benches. There is no water supply. There are open-type toilets in very poor condition. Teaching aids, such as chalk boards and bulletin boards are desired. (p. 55)

[fol. 1002] *Contentment* [a one-teacher school for Negro children teaching grades from 1-8] It has a metal roof that leaks. The windows are inadequate and half the panes are missing in some instances. The floor is wood and in good condition but unpainted. The building is heated by a wood heater in fair condition. There are no lights and the furniture is home-made benches. There is no water supply at all. The children bring their water from home.

Chalk boards are inadequate and in poor condition. The toilets are open type in poor condition, totally inadequate for school use. (p. 57)

Hard Times [a one-teacher school for Negroes, teaching grades 1-8.] The windows are not very good. The floor is wood in fair condition. It has a tongue and groove ceiling in fair condition. The building is heated by a wood heater in fair condition. There are no lights. The furniture is all home-made benches. . . . The water supply comes from a church. . . . The teaching aids are most inadequate. The entire facilities are not suitable for school. (p. 59)

Montgomery [a one-teacher school for Negroes, teaching grades 1-8] The windows are not adequate. The floors are wood in good condition. The building is heated by a wood stove. The lights are inadequate and the furniture is likewise inadequate. There are no toilets available, except for girls. The water is obtained from a cistern. This building was built in 1950. (p. 64)

Pupil-Teacher Ratio

The ratio of white pupils per teacher is 19-1 (p. 87). The ratio of Negro pupils is 30-1. "This is about 60 per cent higher than the figure shown for white children." (p. 91)

While there were 64 negro teachers employed for the year 1953-54, for the year 1954-55 this number has been cut to 59. On the basis of enrollment for 1954-55, the ratio of teachers will be 40 for the negro schools. (p. 91)

Expenditures

The survey showed that the 1954-55 school year budget for Jefferson County alloted $202.35 for each of the 574 white students in average daily attendance. The budget allotted $66.79 for each of the 2007 Negro students in average daily attendance. (p. 91)

(E-41-1 Survey published in 1955 by the Department of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings and Dr. Raymond M. Ainsley.)

[fol. 1003] Jefferson Davis County

School Plant

There are 15 schools for Negroes in Jefferson Davis County. The Negro schools with the exception of Carver at Bassfield and Oakley, are in extremely poor condition. . . . There is little use in discussing each of these schools in detail since their facilities are inadequate and not fit for further use as schools. Many of the buildings are all but falling apart. (p. 54)

Pupil-Teacher Ratio

. . . . The enrollment for the past year [in white schools] was 1,763 with 78 teachers employed or a pupil-teacher ratio of 22.6. This ratio is very desirable, however, it is expensive. It is doubtful that Jefferson Davis County can afford this luxury. . . . (p. 82)

. . . The enrollment for last year [in Negro schools] was 2,764 with 62 teachers employed which makes a pupil-teacher ratio of 42.9 which is extremely high. . . Good work cannot be accomplished when a teacher has such a large number of pupils. In certain instances the ratio is as high as 47 per teacher and in no instances is it lower than 31.3 except at Haw Pond where it is 27.5. . . . (p. 87)

Expenditures

The budget for 1954-55 for Jefferson Davis County reveals that for 1,557 white students, $183.59 was budgeted for each pupil in average daily attendance for eight months. Contrasted to this is the budget for 2,238 Negro pupils in average daily attendance at a cost of $96.19 per pupil for eight months. In other words, Jefferson Davis County is spending approximately twice as much on its white children as it is on its Negro children. This should be given some attention at an early date. (p. 92)

(E-70-1 Survey published in 1956 by the Department of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings.)

[fol. 1004] Jones County and Laurel and Ellisville Separate School Districts

Elementary Schools

. . . The limitation of the program of studies also is dependent upon many factors which must be altered before any sizeable improvement can occur. Only one school plant, the new building at Shady Oak, provides a satisfactory setting for a good elementary program in the county schools for Negroes. Delapidated buildings, poor equipment and the almost complete absence of teaching supplies, are factors which contribute to the deficiencies. (p. 40-41)

Instructional Program

In all county schools for Negroes, several grades are being taught by one teacher, a factor which limits the extent and quality of the program of studies. There is only so much time available for teaching during each day. When this time either is divided consecutively among several grades or used simultaneously for teaching at several levels of instruction, the quality of teaching and the program of studies both suffer. (p. 41)

The Ellisville Municipal Separate School District elementary school follows the pattern of the county elementary schools, although the building is better than any except the Shady Oak School building. (p. 41)

In the Laurel Municipal Separate School District, the schools show evidence of a general administrative policy enrichment. The new buildings, better equipment, and the use of teaching supplies, promote this policy. However, many classrooms are overcrowded . . . (pp. 41-42)

High Schools

Concerning the Negro high schools, the survey comments that the Laurel Municipal Separate School District High School offers only 19 courses per year, which "provides a limited program of studies". However, the survey felt that this high school was better than the Negro county high schools which are all small schools. Concerning the county high schools, the survey remarked: "Probably the greatest handicap in providing an adequate program of studies is

the poor school plants. Although agriculture and home economics are listed as courses in each school except [fol. 1005] Friendship, it is obvious from the lack of equipment and the poor housing available that only limited value can be obtained. A similar situation exists in the laboratory sciences. Library holdings and facilities are practically nonexistent." (pp. 55-58)

Expenditures

The expenditure per white pupil in the Jones County High School ranges from $181 to $110; in Ellisville Municipal Separate District the cost per white pupil was $117; and, in the Laurel Separate School District the cost per white pupil was $148. "Per pupil cost for Negroes was relatively much lower than for the white pupils in the separate school districts and in most of the county schools. These costs were: Jones County, $123, Laurel, $75, and Ellisville, $72." (p. 92)

(E-71-1 Survey published in November 1956 by the Bureau of Educational Research, School of Education, University of Mississippi, under the direction of Dr. John E. Phay.)

[fol. 1006] Lawrence County

Enrollment

The enrollment of white children in 1955-56 was 1,890 pupils. (p. 10)

Pupil-Teacher Ratio

The white pupil-teacher ratio was 25.9 to 1. There were 1,393 Negro pupils enrolled. The Negro pupil-teacher ratio was 35.7 to 1. (pp. 64, 69)

Expenditures

The budget for the year 1954-55 reveals that the county budgeted for 1,800 white children in average daily attendance at a cost of $160.41 per child for a term of 8 months. It budgeted for 1,187 Negroes at a cost of $103.83 per child for 8 months. Thus, approximately 50 per cent more is being spent for each white child than for each Negro child

in Lawrence County. This fact should be given careful consideration. (p. 72)

(E-73-1 Survey published in 1956 by the Department of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings.)

[fol. 1007] Marion County and the City of Columbia

Enrollment

In 1954-55 there were 1,795 white and 2,344 Negro students enrolled in Marion County Schools. (pp. 12, 22)

The Columbia City school enrollment for the same year was 1,626 for white schools and 508 for the Negro school. (pp. 32, 37)

School Plant

Marion County is now providing eight schools for its white children. Half of these schools are high schools which have grades 1-12. . . . (pp. 48-49)

Marion County provides 6 schools for its Negro children. . . . All buildings are publicly owned and grades 1-12 are taught at all except Expose, where only grades 1-8 are taught. A study of the pictures will indicate the condition of most of these buildings. Some few are very good, but most of them are totally unfit for school use. . . . (p. 61)

The Columbia public schools are housed in three buildings for whites and one for Negroes. (p. 70)

(E-74-1 Survey published in 1955 by the Department of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings.)

[fol. 1008] Panola County and Como and Sardis Separate Districts

Pupil-Teacher Ratio

Ninety-seven white teachers instruct 2,250 white children; 101 Negro teachers instruct 3,400 Negro children. ". . . The difference between the number of instructional staff is readily seen. A difference is also apparent in the Como schools with 11 white teachers and 178 white pupils compared with 8 Negro teachers and 303 Negro children; likewise, in Sardis with 17 white teachers and 349 white

pupils compared with 10 Negro teachers and 327 Negro children." (p. 29)

Instructional Program

As is generally true in the state of Mississippi, the curriculum in the Negro schools is limited in scope and in sequence. Most of this is due to the lack of money available for teachers, for supplies and for buildings. Panola County and its separate districts find themselves in the situation of other Mississippi communities. The Negro secondary schools are even more retarded in curriculum offerings than the elementary schools. This is due in part to the fact that few of the total number of Negroes enrolled in the first grade enter the high school. Thus, the limited enrollment plus other factors deters the development of a sound curriculum. Special attention is called to the fact that in grades seven and eight one of the weakest sections of the curriculum occurs, which may have a decided effect upon the elimination of many boys and girls from the schools at this particular point. It may be said that throughout the entire county no high school for Negroes exists which presents a curriculum attractive enough to hold boys and girls in school. The needs of these youngsters are not being met. They undoubtedly know this, and withdraw from school at an early age. . . . (pp. 41-42)

School Plant

As a whole, the white schools are far better than the Negro schools. With the possible exception of Blackjack and Union most of the white children in Panola County attend schools which are housed in acceptable buildings. In some instances, such as the Batesville High School and the elementary schools at Pope and Batesville, unusually good facilities exist. Among the Negro schools, however, the situation is reversed. Few buildings of any quality exist for Negroes. The better ones are located at Bates- [fol. 1009] ville and Como with one small building at Crenshaw. The remainder of the Negro children are too often housed in private buildings, poorly adapted to the needs of the school. It is perhaps fortunate that no great investment now exists in the rural sections in the county for

Negroes. The abandonment of any attendance centers now will not mean any great capital loss to the county and will make much easier the establishment of attendance centers at the proper places. (p. 45)

Expenditures

The per capita expenditure on white pupils in all of the school districts in Panola County varies from a low of $140 to a high of $280. The expenditure per capita on Negro children in the county was $70; in Como, $78, and in Sardis, $86. (pp. 58-59)

(E-4-1 Survey published in 1955 by the Bureau of Educational Research, School of Education, University of Mississippi, under the direction of Dr. John E. Phay.)

[fol. 1010] Pearl River County and Poplarville and Picayune Separate Districts

School Plant

The buildings in this county range from good to poor. Some are not suitable for schools. It might be said that the housing of the Negro children in the county is substandard in every instance. . . . (p, 61)

Expenditures

For a term of 8 months in 1954-55, $158.18 was budgeted for each of the 2,237 white children in Pearl River County. For the same time, $79.02 was budgeted for each of the 184 Negro children. This shows that Pearl River County is spending two dollars for each white child where they spend one for each Negro. This situation should be corrected at the earliest possible date. . . . (p. 116)

Poplarville budgeted for 440 white children in average daily attendance in 1954-55 for a period of nine months at a cost of $151.85. They also budgeted for 186 Negro pupils for a nine months' program at a cost of $108.61. For every two dollars spent on Negroes, three dollars are spent on whites. There is a decided need for improving the Negro education at the Poplarville Schools. (p. 123)

[In 1960-61, Poplarville District spent $57.96 for the instruction of each white child and $18.69 for the instruction of each Negro child.]

In 1954-55, $170.29 per child was budgeted for 1,082 white children for a term of nine months. At the same time, $96.00 per child was budgeted for 606 Negro children for a term of nine months which shows that almost twice as much is spent for each white child as for each Negro child. (p. 127)

[In 1960-61, Picayune spent $74.54 instructing each white child and $26.48 instructing each Negro child.]

Pupil-Teacher Ratio

Picayune is also attempting to give its Negroes a good program of education. However, examination of the table which follows shows that the ratio of pupils to teachers is entirely too high. It is 41½ which is 33.5 percent greater than the average for the State of Mississippi which is the highest in the nation. (p. 125)

(E-81-1 Survey published in 1955 by the Department of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings)

[fol. 1011] Perry County and the City of Richton

Enrollment

In 1954-55 the Perry County white school enrollment was 1,295 and 536 for Negro schools. (pp. 12, 24)

Enrollment for the city of Richton was 510 for whites and 187 for Negroes in 1954-55. (pp. 34, 39)

School Plant

There are seven white schools in Perry County and three Negro schools. "The housing for Negroes has been neglected and the facilities are very inadequate and in a very bad state of repair." All of the Negro schools were rated "poor" by the survey staff. (pp. 52, 65)

Richton schools are housed in five buildings for whites and two for Negroes. One of these is a church. (p. 68)

The Richton negro schools are in a deplorable condition so far as housing is concerned. One of the schools, which

is called Happy Lilly or McSwain, is housed in a church. This building is not suitable for school activities. (p. 71)

Pupil-Teacher Ratio

In Perry County the ratio of pupils per teacher was 21.5-1 for white schools and 33.5-1 for Negro schools in 1954-55. (pp. 93, 99)

In the Richton white school the pupil-teacher ratio was reported as 32-1 and in the Negro schools it was reported as 37-1. (pp. 103, 105)

Expenditures

[In Perry County] the 1954-55 budget shows that for 1,300 children in average daily attendance the budget was $166.86 per child in average daily attendance. The schools are operated for a term of eight months. Perry County spends about 25 per cent more for its white children than it does for its Negroes, based on a budget of 538 negro children at a cost of $114.23 per child in average daily attendance for a period of eight months. (p. 99)

[fol. 1012] For 1954-55 the budget calls for an expenditure of $146.42 per pupil for 415 white children in average daily attendance for eight months school, whereas, for the 157 Negroes in average daily attendance, the expenditure was only $75.13 per pupil. Richton is spending twice as much on its white children as it is on its Negroes, and both schools are operating for eight months only. (p. 103)

(E-75-1 Survey published in 1955 by the Department of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings.)

[fol. 1013] Pike County and Summit, McComb, Fernwood, and Magnolia Separate School Districts

General Description

This chapter points out that many schools in this county, both white and Negro, are operating for less than 9 months. It shows that the pupil-teacher ratio has a wide range in the various schools. In the Negro schools the ratio, in most cases, is unfavorable. . . .

Expenditures

The budget for the year 1954 reveals that Pike County budgeted for an average daily attendance of 1,186 [white] children at a cost of $174.45 per child for 8 months. Compared to this figure is the budget for the average daily attendance of 1,670 Negroes at a cost of $83.60 per child. This means that the county is spending approximately twice as much on the white child as on the Negro child.

The budget for the year 1954-55 reveals that Fernwood budgeted for an average daily attendance of 201 white children at a cost of $151.86 for 9 months. In comparison is the budget for the average daily attendance of 345 Negro children at a cost of $97.70 for 9 months. This means that Fernwood spent 50% more for each white child than it did for each Negro child.

The budget for the year 1954 reveals that Magnolia budgeted for an average daily attendance of 508 [white] pupils at a cost of $167.19 for 9 months for each child. Compared to this figure is the budget for an average daily attendance of 502 Negro children at a cost of $78.18 per child for 8 months. This means that Magnolia is spending twice as much on each white child as it is on each Negro child. Furthermore this does not take into consideration the high school Negroes.

The budget for 1954 reveals that McComb budgeted for an average daily attendance of 1,369 white children at a cost [of] $145.19 for each child for 9 months. Compared to this is the budget for the average daily attendance of 583 Negro children at a cost of $104.35 for 9 months. This means that McComb is spending approximately 50% more on each white child than on each Negro child.

The budget for 1954 reveals that Osyka budgeted for an average daily attendance of 133 white pupils at a cost of $154.66 per child for 8 months. In comparison $63.08 per child was budgeted for 68 Negro children in average daily attendance for 8 months. This means that Osyka is spending more than twice as much on each white child as it is on each Negro child.

[fol. 1014] . . . The budget for 1954-55 reveals that Summit budgeted for the average daily attendance of 271 white children at a cost of $169.15 for 9 months. Compared to

this is the budget for the average daily attendance of 343 Negro children at a cost of $64.81 for a period of 9 months. This means that Summit is spending approximately 3 times as much on each white child as on each Negro. Attention is called to the fact that the Negro schools run for 8 months and the white schools run for 9 months, and that the high school students of Summit attend the Pike County A.H.S.

The budget for the year 1954-55 reveals that Universal budgeted for an average daily attendance of 246 Negroes at a cost of $93.22 for the term of 9 months. The white children in this district attend McComb on a tuition basis. According to the budget $273.11 per child for 9 months is spent for the 41 children in average daily attendance. In other words, for each white child Universal receives 3 times as much as for each Negro. (pp. 187-189)

(E-54-1 Survey published in 1956 by the Department of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings.)

[fol. 1015] Prentiss County and Baldwyn Separate School District

School Plant

[White schools] At the time of this survey Prentiss County operated 13 schools. In addition, schools were operated by the Baldwyn Separate School District at Baldwyn and Pratt. . . . Of the 13 white schools in Prentiss County, seven enrolled pupils in grades one through 12, and six enrolled pupils in grades one through eight. . . . (p. 19)

Prentiss County had only three schools for Negroes in 1955-56. None of these centers presents a good condition. The schools at Baldwyn, Lincoln, and Carver should be abandoned. At Booneville, if sufficient care is taken and considerable money spent, some of the new building might be salvaged. However, the remainder of the plant should be abandoned . . . in the long run a completely new plant may be more economical. (pp. 27, 47-54)

Pupil-Teacher Ratio

In 1955-56 there were 132 teachers instructing the white boys and girls in the Prentiss County schools and 23 in the Baldwyn Separate School District schools, a total of 155 teachers. . . . (p. 24)

There were 15½ teachers instructing the Negro boys and girls in the Prentiss County schools and nine teachers in the Baldwyn Separate School District school. This provides approximately the number of teachers both in the Baldwyn and Prentiss County schools that would be allowed on the basis of one teacher for each 30 pupils in average daily attendance. (p. 28)

(E-35-1 *The Report of a Survey of the Public Schools of Prentiss County and Baldwyn Separate School District.*)

[fol. 1016] Quitman County and Marks Separate District

Pupil-Teacher Ratio

One hundred and six white teachers instructed the 2,482 white children in average daily attendance in 1954-55. Ninety-six Negro teachers instructed the 3,025 Negro children in average daily attendance in that school year. (pp. 16-17, 25-26)

School Plant

Most of the schools for Negroes in Quitman County are located in churches. In these churches one or more teachers conduct classes in all grades from one through eight, as needed. In only Lambert in the county schools and in Marks in the separate school district are there enough teachers so that a teacher may have only one grade to teach. (p. 27)

Expenditures

In the county, expenditure per white pupil ranges from $231 to $131. The expenditure per Negro pupil is $82. In Marks Separate District, $186 is spent on the white, $96 on the Negro child. (p. 51)

(E-5-1 Survey published in 1955 by the Bureau of Educational Research, School of Education, University of Mississippi, under the direction of Dr. John E. Phay.)

[fol. 1017] Stone County

School Plant

. . . . It might be said that the housing of the negro children is substandard in every instance, however it must be said that a good negro school is under construction at the Stone County Training School. . . . (p. 39)

Expenditures

In 1954, this county budgeted $157.71 per white child and $111.47 per Negro child in average daily attendance. (pp. 70, 72)

(E-32-1 Survey published in 1955 by the Department of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings and Dr. Raymond M. Ainsley.)

[fol. 1018] Tallahatchie County

Pupil-Teacher Ratio

. . . In comparing 108 white teachers instructing some 2,200 white children, with 128 Negro teachers instructing 4,000 Negro children, the difference between the number of instructional staff is readily seen. (pp. 32-33)

School Plant

Most of the schools for Negroes in Tallahatchie County are located in churches. In these churches one or more teachers conduct classes in all grades from one through eight, as needed. . . . It is the rare instance where a teacher has only one grade to teach. (p. 33)

The Negro elementary schools housed as they are, in most instances, in buildings completely inadequate for a modern instructional program, obviously could present only the most meager curricular offerings. . . .

The limited offerings in the seventh, eighth and ninth grades in the Negro schools is too often merely duplication of work offered in lower grades. . . . (pp. 38-39)

The report recommends that 53 of the 59 schools used to house Negro children this school year (1955) be abandoned. (p. 74)

Expenditures

. . . It may be seen from the table that the per pupil cost for white schools ranges from $53.93 in the Charleston school to $694.70 in the Glendora School. The range for the Negro school per pupil cost is listed as $19.80 for the Glendora pupils to $52.50 for the Sumner pupils. . . . (p. 58)

(E-6-1 Survey published in 1955 by the Bureau of Educational Research, School of Education, University of Mississippi, under the direction of Dr. John E. Phay.)

[fol. 1019] Union County and New Albany Separate District

School Plant

Most of the county schools for Negroes in Union County are located in churches or non-public buildings. The Negro school in the New Albany Separate School District has an attractive brick classroom building and several less desirable frame buildings. In the county schools, one, two or three teachers conduct classes in all grades from one through eight, as needed. The number of classes assigned to each teacher varies with the school location and the number of children. One teacher may teach grades one through eight, or three teachers might divide the grades. In none of the county schools for Negroes does a teacher have only one grade to teach. (p. 30)

Elementary Schools

The program of studies in the Negro elementary schools follows that of the white elementary schools. The exception is that there is a little deviation from the program of studies outlined by the state of Mississippi in the state adopted textbook program. This, again, is the condition which is found in most of the Negro elementary schools in Mississippi and again Union County follows the rule and is not an exception. It may be noted, however, that in the Negro elementary schools, the quality of education and the materials available for teaching seem to be far below that in the white schools. This is due in part to the poor physical surroundings. . . . (pp. 36-37)

High School

The only Negro high school in the county is the Union County Training School in New Albany. This high school offers 20 subjects consisting of the traditional college entrance requirements plus work in home economics and agriculture. This is a limited program of studies for Negro boys and girls. Only a limited amount of materials of instruction and laboratory equipment are available. (p. 45)

Expenditures

In the New Albany Separate School District, $171 is budgeted for each white child and $123 for each Negro child. In Union County itself less money was budgeted for both white and Negro children but almost without exception far more was budgeted for the white child than for the Negro child. (pp. 55-58)

(E-22-1 Survey published in 1956 by the Bureau of Educational Research, School of Education, University of Mississippi, under the direction of Dr. John E. Phay.)

[fol. 1020]

Wayne County

School Plant

Nine schools for Negroes are provided—four are privately owned including one church; three are rated "abandon", two, "unsatisfactory" or partially so. Six schools for whites are provided—all are publicly owned; none of them receive ratings as low as the Negro schools. (pp. 43, 53)

Pupil-Teacher Ratio

. . . The teacher-pupil ratio is favorable as far as the white children are concerned since in general it is beneath that of the State. For the Negroes the ratio is above the state average. (p. 80)

Expenditures

The budget for the year 1954-55 reveals that the county budgeted for 2,363 white children in average daily attendance at a cost of $159.27 per child per term of 8 months.

The budget for the 1,671 Negroes in average daily attendance was $75.99 each for a term of 8 months. Wayne County is spending twice as much for the education of each white child as it is for each Negro. This condition should be corrected. (pp. 80-81)

(E-66-1 Survey published in 1956 by the Department of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings.)

[fol. 1021] Yalobusha County

Pupil-Teacher Ratio

Seventy-three white teachers instructed 1,688 white children in average daily attendance in 1955-56. Fifty-two Negro teachers instructed 1,543 Negro children in average daily attendance during the same school year. (pp. 20-24)

School Plant

. . . It should be noted that both in the quality and quantity of housing, in the availability of instructional materials, and in the general environment, the Negro elementary schools are below those of the white schools in their neighborhood. These are factors which influence and control the program of studies. (p. 29)

Four new school houses were constructed for Negroes between 1952-1955. (p. 40)

(E-24-1 Survey published in 1956 by the Bureau of Educational Research, School of Education, University of Mississippi, under the direction of Dr. John E. Phay.)

[fol. 1022] Answer to Interrogatory Number 11(b) as to the Name and Address of Each Witness the United States Intends to Call or Otherwise Use at the Trial of This Cause to Show That Public Education Facilities Provided for Negroes in Mississippi Were and Are Inferior to Those Provided for White Persons.

The United States intends to rely principally on the documents listed in answer to Question 11(c) in proving that public educational facilities provided for Negroes in Mississippi were and are inferior to those provided for

white persons. Such persons as are necessary to establish the authenticity of these documents will be called. The identity of those persons has not yet been determined. No decision has at this time been made as to whether any other witnesses will be called specifically to testify about this issue. All witnesses, white and Negro, who testify may be asked about their educational experience in Mississippi and their personal knowledge of the educational system.

[fol. 1023] ANSWER TO INTERROGATORY NUMBER 11(c) AS TO THE SPECIFIC DOCUMENTS THE UNITED STATES INTENDS TO USE TO PROVE THAT THE PUBLIC EDUCATION FACILITIES PROVIDED FOR NEGROES IN MISSISSIPPI WERE AND ARE INFERIOR TO THOSE PROVIDED FOR WHITE PERSONS.

The United States intends to rely on the following documents to prove that public education facilities provided for Negroes in Mississippi were and are inferior to those provided for white persons:

E-0-1 *Annual Report of the Superintendent of Public Education of the State of Mississippi for the Year Ending Dec. 31, 1872, transmitted to the Legislature, March 1873.*

E-0-2 *Biennial Report of the State Superintendent of Public Education to the Legislature of Mississippi for the Scholastic Years 1889-1890 and 1890-1891.*

E-0-3 *Biennial Report of the State Superintendent of Public Education to the Legislature of Mississippi for Scholastic Years 1891-1892 and 1892-1893.*

E-0-4 *Biennial Report of the State Superintendent of Public Education to the Legislature of Mississippi for Scholastic Years 1899-1900 and 1900-1901.*

E-0-5 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi for the Scholastic Years 1909-1910 and 1910-1911.*

E-0-6 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi for the Scholastic Years 1927-1928 and 1928-1929.*

E-0-7 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi for the Scholastic Years 1929-1930 and 1930-1931.*

E-0-8 *Twenty Years of Progress 1910-1930* and *A Biennial Survey, Scholastic Years 1929-1930 and 1930-1931 of Public Education in Mississippi,* Issued by W. F. Bond, State Superintendent of Education.

[fol. 1024]

E-0-9 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi, for the Scholastic Years 1931-1932 and 1932-1933.*

E-0-10 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi, for the Scholastic Years 1933-1934 and 1934-1935.*

E-0-11 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi, for the Scholastic Years 1935-1936 and 1936-1937.*

E-0-12 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi, for the Scholastic Years 1937-1938 and 1938-1939.*

E-0-13 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi, for the Scholastic Years 1939-1940 and 1940-1941.*

E-0-14 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi, for the Scholastic Years 1941-1942 and 1942-1943.*

E-0-15 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi, for the Scholastic Years 1943-1944 and 1944-1945.*

E-0-16 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi, for the Scholastic Years 1945-1946 and 1946-1947.*

E-0-17 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi, for the Scholastic Years 1947-1948 and 1948-1949.*

E-0-18 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi, for the Scholastic Years 1949-1950 and 1950-1951.*

E-0-19 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi, for the Scholastic Years 1951-1952 and 1952-1953.*

E-0-20 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi, for the Scholastic Years 1953-1954 and 1954-1955.*

[fol. 1025]

E-0-21 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi, for the Scholastic Years 1955-1956 and 1956-1957.*

E-0-22 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi for the Scholastic Years 1957-1958 and 1958-1959.*

E-0-23 *Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi for the Scholastic Years 1959-1960 and 1960-1961.*

E-0-24 *Biennial Report of the Secretary of State to the Legislature of Mississippi, Oct. 1, 1921, to Oct. 1, 1923.*

E-0-25 *Biennial Report of the Secretary of State to the Legislature of Mississippi, Oct. 1, 1923, to Oct. 1, 1925.*

E-0-26 *Biennial Report of the Secretary of State to the Legislature of Mississippi, Oct. 1, 1927, to Oct. 1, 1929.*

E-0-27 *Mississippi Blue Book: Biennial Report of the Secretary of State to the Legislature of Mississippi, July 1, 1929, to July 1, 1931.*

E-0-28 *Mississippi Blue Book: Biennial Report of the Secretary of State to the Legislature of Mississippi, July 1, 1933, to July 1, 1935.*

E-0-29 *Mississippi Blue Book: Biennial Report of the Secretary of State to the Legislature of Mississippi (1943-1945).*

E-0-30 *Mississippi Blue Book: Statistical Register of the State of Mississippi,* issued by the Secretary of State for 1945-1949.

E-0-31 *Mississippi Official and Statistical Register,* issued by the Secretary of State for 1949-1951.

E-0-32 *Mississippi Official and Statistical Register (1956-1960),* issued by the Secretary of State of Mississippi.

E-0-33 *Mississippi Official and Statistical Register (1960-1964),* issued by the Secretary of State of Mississippi.

E-0-34 *High Schools,* Bulletin #23 (1921), State of Mississippi Department of Education.

[fol. 1026]

E-0-35 *Seventh Biennial Report and Brief Fourteen-Year Survey of Vocational Education in Mississippi to the Legislature of Mississippi for the Biennial Period Ending June 30, 1931.*

E-0-36 *Twenty-First Biennial Report on Vocational Education in Mississippi for Biennial Period Ending June 30, 1959.*

E-0-37 *A Report of the Committee of Investigation of the Teacher Training Facilities for Negroes in Mississippi,* Bulletin #61 (1930), State of Mississippi, Department of Education.

E-0-38 *Let Us Pay for the Kind of Education We Need: Report of a Study of State and Local Support of Mississippi's Schools,* William P. McLure, Director, Bureau of Educational Research, and Associate Professor of Education, School of Education, University of Mississippi.

E-0-39 *A Report to the People of Mississippi on the White House Conference on Education,* Bulletin No. 140 (Dec. 1955), State Department of Education.

E-0-40 *Public Education in Mississippi; Reports of Advisory Study Groups to the Legislative Education Study Committee (Dec. 1961),* vol. 1.

E-0-41 *Public Education in Mississippi: Report of Mississippi Legislative Education Study Committee, Dec. 1961.*

E-0-42 *Biennial Report of the Board of Trustees of Mississippi State Institutions of Higher Learning, 1934-1935.*

E-0-43 *Higher Education in Mississippi: A Report to the Board of Trustees, Institutions of Higher Learning (1945),* Joseph F. Gibson, Director.

E-0-44 *Biennial Report of the Board of Trustees of State Institutions of Higher Learning, July 1, 1947, to June 30, 1949,* to the State Legislature.

E-0-45 *Biennial Report of the Board of Trustees of State Institutions of Higher Learning from July 1, 1949; to June 30, 1951,* to the State Legislature.

E-0-46 *Higher Education in Mississippi: A Survey Report to the Board of Trustees, Institutions of Higher Learning (1954)*, John E. Brewton, Director.

[fol. 1027]

E-0-47 *Report of the State Educational Finance Commission, June 1, 1954-June 30, 1955*, Department Reports, State of Mississippi, Vol. 1, 1953-1955.

E-0-48 *Biennial Report of the Board of Trustees of State Institutions of Higher Learning from July 1, 1953, to June 30, 1955*, to the State Legislature, Department Reports, State of Mississippi, Vol. 1, 1953-1955.

E-0-49 *Report of the State Educational Finance Commission, July 1, 1959, to June 30, 1961.* Department Reports, State of Mississippi, Vol. 1, 1959-1961.

E-0-50 *Biennial Report of the Board of Trustees of State Institutions of Higher Learning from July 1, 1959, to June 30, 1961, to the State Legislature, State of Mississippi.* Department Reports, State of Mississippi, 1959-1961.

E-0-51 *Public Education in Mississippi: Reports of Advisory Study Groups (Vol. II), Institutions of Higher Learning, 1961.*

E-0-52 *Libraries in Mississippi: A Report of a Survey of Library Facilities, 1946-1947.* Augusta B. Richardson, Chairman, State Survey Committee.

E-0-53 *Twelfth Biennial Report of the Mississippi State Library Commission of the State of Mississippi, 1947-1949.*

E-0-54 *People Without Books: An Analysis of Library Services in Mississippi.* Bureau of Public Administration, University of Mississippi (1950).

E-0-55 *Fifteenth Biennial Report of the Mississippi Library Commission, July 1, 1953-June 30, 1955.*

E-0-56 *A Survey of the Plant Facilities of the Public Schools of Mississippi: General Summary by the Mississippi State Department of Education (1934).*

E-0-57 *Public Schools for White Children, School Session 1954-1955.* State of Mississippi Department of Education.

E-0-58 *Public Schools for Negro Children, 1954-1955 School Session.* State of Mississippi Department of Education.

E-0-59 *Public Schools in Mississippi, School Session 1958-1959.* Division of Administration and Finance, State Department of Education.

[fol. 1028]

E-0-60 *Public Schools in Mississippi, Session 1959-1960.* Division of Administration and Finance, State Department of Education.

E-0-61 *Public Schools in Mississippi, Session 1961-1962.* Division of Administration and Finance, State Department of Education.

E-0-62 *Mississippi Public Secondary Schools Enrollment and Staff, 1961-1962.* Division of Administration and Finance, State Department of Education.

E-0-63 *Special Salary Tabulations,* Mississippi State Department of Education, Division of Administration and Finance (May, 1958).

E-0-64 *Special Salary Tabulations,* Mississippi State Department of Education, Division of Administration and Finance (March, 1963).

E-0-65 *Statistical Data on School Session 1949-1950.* Mississippi State Department of Education, Division of Administration and Finance.

E-0-66 *Statistical Data, School Session 1951-1952.* Mississippi State Department of Education, Division of Administration and Finance.

E-0-67 *Statistical Data, 1952-1953.* Mississippi State Department of Education, Division of Administration and Finance.

E-0-68 *Statistical Data, 1953-1954.* Mississippi State Department of Education, Division of Administration and Finance.

E-0-69 *Statistical Data, 1954-1955.* Mississippi State Department of Education, Division of Administration and Finance.

E-0-70 *Statistical Data, 1955-1956.* Mississippi State Department of Education, Division of Administration and Finance.

E-0-71 *Statistical Data, 1957-1958.* Mississippi State Department of Education, Division of Administration and Finance.

E-0-72 *Statistical Data, 1958-1959.* Mississippi State Department of Education, Division of Administration and Finance.

E-0-73 *Statistical Data, 1959-1960.* Mississippi State Department of Education, Division of Administration and Finance.

E-0-74 *Statistical Date, 1961-62.* Mississippi State Department of Education, Division of Administration and Finance.

[fol. 1029]

E-0-75 *Statistical Data, 1960-1961.* Mississippi State Department of Education, Division of Administration and Finance.

E-0-76 *A Report to the Mississippi State Legislature by the Recess Education Committee, March 1953.*

E-0-77 *Southern School News, February 1962.* (p. 6)

E-38-1 *School Survey—The City of Natchez and Adams County.*

Survey published in 1955 by the Dept. of Educational Administration, Mississippi Southern Col-

lege, under the direction of Dr. Ralph S. Owings and Dr. Raymond M. Ainsley.

E-46-1 *School Survey—Amite County.*

Survey published in 1956 by the Dept. of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings.

E-14-1 *The Report of a Survey of the Public Schools of Benton County.*

Survey published in June 1956 by the Bureau of Educational Research, School of Education, University of Mississippi, under the direction of Dr. John E. Phay.

E-39-1 *School Survey—The City of Port Gibson and Claiborne County.*

Survey published in 1955 by the Dept. of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings and Dr. Raymond M. Ainsley.

E-29-1 *The Report of a Survey of the Public Schools of Clay County and West Point Separate School District.*

Survey published in May 1956 by the Bureau of Educational Research, School of Education, University of Mississippi, under the direction of Dr. John E. Phay.

E-67-1 *School Survey—Covington County.*

Survey published in 1956 by the Dept. of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings.

[fol. 1030]

E-68-1 *School Survey—The City of Hattiesburg and Forrest County.*

Survey published in 1955 by the Dept. of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings and Dr. R. A. Ainsley.

E-69-1 *School Survey—Greene County.*

Survey published in 1956 by the Dept. of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings.

E-48-1 *School Survey—Franklin County.*

Survey published in 1955 by the Dept. of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings.

E-77-1 *School Survey—George County.*

Survey published in 1956 by the Dept. of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings.

E-16-1 *The Report of a Survey of the Public Schools of Grenada County and Grenada Separate School District.*

Survey published in July 1956 by the Bureau of Educational Research, School of Education, University of Mississippi, under the direction of Dr. John E. Phay.

E-50-1 *The Report of a Survey of the Public Schools of Holmes County, Durant Separate School District and Lexington Separate School District.*

Survey published in June 1956 by the Bureau of Educational Research, University of Mississippi, under the direction of Dr. John E. Phay.

E-80-1 *Separate School Districts of Lyon, Moss Point, Ocean Springs, and Pascagoula and Jackson County.*

Survey published in 1956 by the Dept. of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings.

E-41-1 *School Survey—Jefferson County.*

Survey published in 1955 by the Dept. of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings and Dr. Raymond M. Ainsley.

[fol. 1031]

E-70-1 *School Survey—Jefferson Davis County.*

Survey published in 1956 by the Dept. of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings.

E-71-1 *The Report of a Survey of the Public Schools of Jones County and the Laurel and Ellisville Separate School Districts.*

Survey published in November 1956 by the Bureau of Educational Research, School of Education, University of Mississippi, under the direction of Dr. John E. Phay.

E-73-1 *School Survey—Lawrence County.*

Survey published in 1956 by the Dept. of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings.

E-74-1 *School Survey—City of Columbia and Marion County.*

Survey published in 1955 by the Dept. of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings.

E-18-1 *The Report of a Study of the Holly Springs Separate School District.*

Survey published in August 1949 by the School of Education, University of Mississippi.

E-4-1 *The Report of a Survey of the Public Schools of Panola County and Como and Sardis Separate School Districts.*

Survey published in December 1955 by the Bureau of Educational Research, School of Education, University of Mississippi, under the direction of Dr. John E. Phay.

E-81-1 *School Survey—The Cities of Picayune and Poplarville and Pearl River County.*

Survey published in 1955 by the Dept. of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings.

E-54-1 *School Survey—The Separate School Districts of Fernwood, Magnolia, McComb, Osyka, and Summit and Pike County.*

Survey published in 1956 by the Dept. of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings.

[fol. 1032]

E-35-1 *The Report of a Survey of the Public Schools of Prentiss County and Baldwyn Separate School District.*

E-75-1 *School Survey—City of Richton and Perry County.*

Survey published in 1955 by the Dept. of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings.

E-5-1 *The Report of a Survey of the Public Schools of Quitman County and Marks Separate School District.*

Survey published in December 1955 by the Bureau of Educational Research, School of Education, University of Mississippi, under the direction of Dr. John E. Phay.

E-32-1 *School Survey—Stone County.*

Survey published in 1955 by the Dept. of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings and Dr. Raymond M. Ainsley.

E-12-1 *The Report of a Study of the Education for Negroes in Sunflower County.*

Survey published in March 1950 by the Bureau of Educational Research, School of Education,

University of Mississippi, under the direction of Dr. John E. Phay.

E-6-1 *The Report of a Survey of the Public Schools of Tallahatchie County.*

Survey published in April 1955 by the Bureau of Educational Research, School of Education, University of Mississippi, under the direction of Dr. John E. Phay.

E-22-1 *The Report of a Survey of the Public Schools of Union County and New Albany Separate District.*

Survey published in January 1956 by the Bureau of Educational Research, School of Education, University of Mississippi, under the direction of Dr. John E. Phay.

E-66-1 *School Survey—Wayne County.*

Survey published in 1956 by the Dept. of Educational Administration, Mississippi Southern College, under the direction of Dr. Ralph S. Owings.

[fols. 1033-1269]

E-24-1 *The Report of a Survey of the Public Schools of Yalobusha County.*

Survey published in June 1956 by the Bureau of Educational Research, School of Education, University of Mississippi, under the direction of Dr. John E. Phay.

E-0-78 Speech of Governor Vardaman of Mississippi quoted in the Jackson, Mississippi *Daily Clarion-Ledger.* July 11, 1907

E-0-79 *Message by Governor Fielding L. Wright to the Joint Session Mississippi Legislature,* January 3, 1950.

E-0-80 Message from Governor White to the Senate of Mississippi, 1953

Extraordinary Session *Senate Journal,* p. 970.

[fol. 1270] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3312

[Title omitted]

ANSWERS TO INTERROGATORIES OF STATE OF MISSISSIPPI; MRS. PAULINE EASLEY, CIRCUIT CLERK AND REGISTRAR OF CLAIBORNE COUNTY; J. W. SMITH, CIRCUIT CLERK AND REGISTRAR OF COAHOMA COUNTY; T. E. WIGGINS, CIRCUIT CLERK AND REGISTRAR OF LOWNDES COUNTY—filed September 3, 1963.

Answers

Appendix A

[fol. 1271] ANSWER TO INTERROGATORY NO. 3 STATE OF MISSISSIPPI

White political supremacy means an active policy to assure political control at every level of government to white citizens and to exclude Negroes as a group from any effective power in the political power structure.

[fol. 1272] Answers to Interrogatories Nos. 5(a-d)
State of Mississippi

The factual basis for the allegation that Mississippi since 1890 has by law, custom and usage maintained and promoted white political supremacy and a racially segregated society is set out in Appendix A and Appendix B (attached hereto) in answer to Interrogatories Nos. 7(h-j) involving white primary elections, in answer to Interrogatories Nos. 11(a-b) involving inferior educational opportunities provided for Negroes, and the answers to Interrogatories Nos. 1, 6, 9 and 13 involving registration and voting statistics, all of which is herein incorporated by reference. In addition, a racially segregated society in Mississippi has been promoted and maintained officially by the adoption of Mississippi constitutional and statutory provisions requiring segregation of the races.

The name, official capacity of each person where known who has furthered, maintained and promoted white political supremacy and the manner in which it was effected are set out in connection with the specific occurrences or events in the said Appendices A and B, and in answers involving white primary elections and unequal educational opportunities provided for Negroes.

The segregation which is officially recognized and required by the Mississippi laws has been accomplished by representatives of the people of the State of Mississippi in its legislature; the maintaining of a segregated society has been accomplished by the adoption of laws requiring segregation.

[fol. 1273] The acts of the defendant State, as distinguished from the other defendants, toward maintaining white political supremacy and a segregated society, are all the acts described in this answer. In addition, the acts

of the other defendants are acts of the defendant State —acting through its agents and officials.

[fol. 1273-A] Answers to Interrogatories Nos. 7(a-b) State of Mississippi

Answer to Interrogatory No. 2(b) Wiggins

A. The factual basis for the claim that white political supremacy has been promoted and maintained in Mississippi is set out in Appendix A, herein incorporated. Appendix A sets out the factual information presently known to plaintiff. The Appendix is divded into methods whereby white political supremacy is maintained; within each category the information is divided by county and within each county the information is set out chronologically.

B. Other methods of maintaining white political supremacy other than those set out in the Complaint are: the refusal to permit Negroes to pay their poll taxes, and the unreasonable and arbitrary delays encountered by Negroes attempting to register to vote.

[fol. 1274] Answers to Interrogatories Nos. 7(c-g) State of Mississippi

Answers to Interrogatories Nos. 2(a, c, d, f, 6) Wiggins
Answer to Interrogatory No. 1 Easley
Answers to Interrogatories Nos. 2(a-f, j) Smith

In answer to these subparagraphs of Interrogatory No. 7, the names and addresses and other background information of Negroes who have not been allowed to register, who have been required to interpret sections of the Constitution, and who have been subjected to the other methods by white officials in promoting white political supremacy described in answer to Interrogatory No. 7 (above), the officials and full factual circumstances are set out in Appendix A attached hereto and herein incorporated. Appendix A is arranged (1) by subject matter (methods of maintaining white political supremacy), and (2) by county within each subject matter, and (3) chronologically within each county. Appendix A includes the period prior to the effective date of the legislation implemeting Section 244 (March 24, 1955). Information not given, such as

address of officials or official capacity of the particular officials, is not known.

Lowndes #32
Claiborne #39
Coahoma #2

[fol. 1275] Answer to Interrogatory No. 8 State of Mississippi

The allegation in paragraph 23 that a much higher percentage of Negroes of voting age in Mississippi were literate in 1951 than in 1890 is admitted in paragraph 23 of the answer of the defendant State of Mississippi.

[fol. 1276] Answers to Interrogatories Nos. 12 (a-b). State of Mississippi

Paragraph 35 of the Complaint charges that the 1954 Amendment to Section 244 has the effect of placing the burden of the new and additional registration requirements of Section 244 more heavily on Negro citizens in Mississippi than on white citizens. At the time of the adoption of the Amendment to Section 244, the majority of white citizens were registered voters, whereas less than 5% of the Negroes of voting age were registered to vote. The small percentage of Negroes registered to vote was due to the adoption of the Constitution of 1890 and particularly, adoption of Section 244 in 1890, and following that due to the discriminatory practices described in answer to Interrogatory No. 7. These practices have effectively accomplished the purpose of Section 244 in restricting the Negro franchise and in maintaining white political supremacy and segregation in Mississippi. The imposition of the new and onerous requirements of the Amendment to Section 244 following a period of discriminatory treatment of Negroes permanently imbeds the past illegal conduct into the registration system in Mississippi. This would be true even if the new system under Section 244 had been fair and reasonable and had been administered without regard to race. Under the Amendment to Section 244, white persons who possess minimal literacy qualifications and who received favored treatment prior to the adoption will forever be exempt from the new

requirements as they were registered prior to January [fol. 1277] 1, 1954. Negroes, who, after the adoption of the the Amendment to Section 244, possess qualifications equal to white persons who are registered, must assume the burden of the new requirements as a prerequisite to voting. In view of the registration statistics in Mississippi at the time of the adoption of the Amendment to Section 244, the burdens of the new and onerous requirements fall most heavily upon Negro citizens of voting age.

The facts relied upon to support the allegation of comparative effect of the Amendment to Section 244 on Negroes and white persons are set out in Appendix A attached; the statistics of Negro registration (answer to Interrogatories Nos. 1, 6, 9, 13), the white primary elections (answer to Interrogatories Nos. 7(h-j), and the information as to inferior education provided for Negroes (answer to Interrogatories Nos. 11(a-b). The plaintiff does not presently know the persons whom it intends to call as witnesses to prove this allegation other than registrars and former registrars of voters in the State of Mississippi.

[fol. 1278] Answers to Interrogatories Nos. 14(a-d)
State of Mississippi

Answer to Interrogatory No. 7 Wiggins
Answers to Interrogatories Nos. 2, 3 Easley
Answers to Interrogatories Nos. 3(a-c) Smith

The factual basis for the allegation in paragraph 41 of the Complaint that the defendants and their agents and officials are using and will continue to use the interpretation and duties and obligations tests to deprive otherwise qualified Negro citizens of the right to vote because of race and that these deprivations have occurred by the adoption and use of the interpretation and duties and obligations tests is set out in Appendix B which is attached hereto and incorporated by reference.

In Appendix B there are three parts to each county analysis. The period covered by Appendix B is from March 24, 1955 to date. Part I states the individual experiences and full factual circumstances, if known, of each Negro who has been deprived of the right to vote because of the interpretation test and duties and obligations test.

Also, the public official involved in such deprivation is named where known. The number in the left-hand column of the Part I in each county refers to the answers to Interrogatories Nos. 23 and 24 requesting the names of persons who have been interviewed or given statements. For convenience, the full background data, name, address, literacy level, age and occupation (where called for) are set out in those answers and merely referred to by number in Appendix B.

Part II of each county in Appendix B deals with an analysis of the application forms in the county. This analysis is made to demonstrate the various ways in which [fol. 1279] Negro applicants have, because of the discretion vested in the county registrars, not been accorded the favored treatment accorded to whites registering to vote in these particular counties.

Part III within each county is a list of Negroes who have been deprived of the right to register and to vote by use of the interpretation test, and duties and obligations test, good moral character test, and the perfect application form requirement. In many instances, the precise basis for the rejection of any particular applicant is not known other than that it was some deficiency in the completion of the application form. Also, there are many counties in which application forms of rejected Negroes have not been obtained. Accordingly, the only Negroes listed in Part III of Appendix B by county are those for which we have some specific basis, either by an analysis of the application forms, or by personal interview, for believing that the particular applicant was rejected either because of the interpretation test, the duties and obligations test, the good moral character requirement, and/or the perfect application form requirement. Rejected Negroes who are listed in Part I of Appendix B who completed application forms, who may not also be listed in Part III, were also deprived of the right to vote because of the interpretation test and duties and obligations test with the qualification that the precise basis for rejection is not presently known.

In Appendix B the fact that either Parts I, II or III are missing for particular counties indicates that the investigation or records analysis is incomplete. Full ad-

ditional facts and circumstances will be furnished with [fol. 1280] reasonable dispatch with the completion of an investigation or records analysis in each county.

[fol. 1281] Answers to Interrogatories Nos. 14(e-g)
State of Mississippi

Answers to Interrogatories Nos. 3(d-f) Smith

The factual basis for the allegation in paragraph 41 that the deprivations occurring by the adoption of the interpretation test and the duties and obligations test are pursuant to a pattern and practice of racial discrimination is the cumulative state-wide and county-wide factual circumstances of the use of both tests (Appendix B attached and incorporated). And, in addition, the adoption and use by a state of an unconstitutional requirement in and of itself constitutes a pattern and practice of racial discrimination.

With respect to the request for full factual circumstances of the allegation that the defendant State has deprived Negroes pursuant to a pattern and practice of racial discrimination, the plaintiff's position is that the laws of Mississippi and the acts of the public officials of the State of Mississippi, including all the defendants and the other registrars throughout the State of Mississippi, are the acts of the defendant State.

Appendix B is organized by county and includes the full facts and circumstances of each deprivation including names, if known, of persons present on such occasions.

[fol. 1282] Answers to Interrogatories Nos. 14(h-i)
State of Mississippi

Answer to Interrogatory No. 3 Wiggins
Answer to Interrogatory No. 4 Easley
Answers to Interrogatories Nos. 3(g-k) Smith

The full factual basis and the particularities with respect to the allegation that the existence and use of the interpretation test and duties and obligations test deters Negroes from applying for registration is set out and identified as such in the parts numbered I (by county in Appendix B and herein incorporated by reference). In addi-

tion, the census figure and statistics of Negro registration and voting as set out in answers to Interrogatories Nos. 9 and 13(a) are part of the factual basis to prove the allegation that the effect of the interpretation test and the duties and obligations test has been and is, and in view of the statistics, will continue to be, a deterrence to otherwise qualified Negroes from applying for and becoming registered voters in the State of Mississippi.

[fol. 1283] Answer to Interrogatory No. 15, State of Mississippi

The information requested as to the purpose of the good moral character requirement of Section 241-A of the Mississippi Constitution is set out in answer to interrogatory number 15(a) and herein incorporated. With respect to the alleged effect of the good moral character requirement, the factual basis that its use will subject a vast majority of Negroes of voting age in Mississippi to this requirement and exempt the majority of the white citizens of voting age is the census figures and statistics on registration and voting which are set out in answers to interrogatories numbered 9 and 13(a) and herein incorporated. The factual basis that this good moral character requirement is another device to discriminate against Negroes and makes detection of discrimination more difficult is that Section 241-A vests in the local county registrar unlimited discretion to make determinations without any limiting or objective criteria of the good moral character of any applicant.

[fol. 1284] Answer to Interrogatory No. 15(b)

The plaintiff does not presently know which witnesses, if any, it will call to prove the alleged purpose of Section 241(a) of the Mississippi Constitution.

[1285] Answers to Interrogatories Nos. 15(c-d)

H.B. 899 is the legislation which inserts in the Mississippi statutes the constitutional requirement of good moral character under Section 241-A. The facts which show its purpose are set out in answer to interrogatory numbered 15(a). It is part of the package of legislation in 1962. The

factual data showing the purpose of the 1962 legislation is set out in answer to interrogatory numbered 18.

Plaintiff does not presently know what witnesses, if any, it will call to prove the alleged purpose of H.B. 899.

[fol. 1286] Answers to Interrogatories Nos. 15(e-f)

H.B. 905 provides that the registration application form contain a means of determining good moral character. The purpose of H.B. 905 is the same as the purpose of Section 241-A and the answer to interrogatory numbered 15(a) is herein incorporated. In addition, H.B. 905 was part of the package of legislation enacted in 1962 which is under attack and the factual basis of the allegation as to its purpose is set out in answer to interrogatory numbered 18 and herein incorporated.

Plaintiff does not presently know which witnesses, if any, it intends to call to prove the alleged purpose of H.B. 905.

[fol. 1287] Answers to Interrogatories Nos. 15(g-j), State of Mississippi

Answers to Interrogatories Nos. 6, 7 Easley

The full factual basis setting forth for the purpose of H.B. 822 (publication) and H.B. 904 (the challenge provision) is set out in answer to interrogatory numbered 18, and herein incorporated.

Plaintiff does not presently know which witnesses, if any, it will call to prove the alleged purpose of H.B. 822 and H.B. 904.

Plaintiff does not presently know of any Negroes denied the right to vote under H.B. 822 and H.B. 904 in Claiborne County.

[fol. 1288] Answer to Interrogatories Nos. (16 1-3) State of Mississippi

Answer to Interrogatories Nos. 4, Wiggins
Answer to Interrogatories Nos. 4 1-3, Smith

The factual basis for the allegation that the good moral character qualification in Mississippi had deterred qualified Negro citizens from applying to register to vote is:

1. That the imposition of the new and additional requirement of good moral character together with its implementing legislation requires the applicants to return to the registrars' offices after publication of their names for two consecutive weeks in the county newspapers, and often the applicant is not permitted to determine whether he passed or failed if the registrar is out.

2. In addition, the requirement of publication of the names in the newspaper has an inevitable deterrent effect because it subjects Negroes to economic pressures by making public their efforts to register in areas where it is unpopular for Negroes to register or vote.

The full factual circumstances of the effect of the unreasonable delays imposed by the good moral character requirements and the possible subjection to private intimidations is set out in Parts I of Appendix B attached hereto and incorporated. (See George County, Jefferson Davis County and Tallahatchie County as to the experiences of Negroes whose names appeared in newspapers in connection with registration or voter registration suits.)

[fol. 1289] Answers to Interrogatories Nos. 16 (b1-b7)
State of Mississippi

Answers to Interrogatories Nos. 4, 8 Wiggins
Answers to Interrogatories No. 5 Easley
Answers to Interrogatories Nos. 4(b1)-4(b4) Smith

The factual basis for the assertion in paragraph 52 of the Complaint that the use and threatened use of the good moral character requirement deprives Negro citizens of the right to register to vote without distinction of race, and that the deprivations by virtue of the adoption and use of this requirement are pursuant to a pattern and practice or recial discrimination. The individual act of the defendent State which constitutes the pattern and practice of racial discrimination is the adoption by the State of Mississippi of the good moral character requirement in a setting of white political supremacy and a segregated society. The adoption of such an unconstitutional requirement is in and of itself a pattern and practice of racial discrimination.

The names, addresses, etc., and the full factual circum-

stances of each deprivation, the use of the character requirement, the public officials involved, and private citizens involved, if known, are set out in Parts I and III of Appendix B attached hereto and herein incorporated, to the extent that the information requested is known to the plaintiff.

Presently, Plaintiff has no information as to the discriminatory administration of the requirement. The use of a statute which is unconstitutional in violation of the Fifteenth Amendment renders each application of the statute *per se* discriminatory.

[fol. 1290] Answer to Interrogatory Nos. 17(a-g), State of Mississippi

The factual basis for the allegation that the purpose of Section 3209.6 of the Mississippi Code as amended in 1960 was to frustrate federal protection of voting rights and to facilitate discrimination by county registrars is set out in answer to Interrogatory No. 15a. That answer is herein incorporated by reference.

In 1960 the Congress of the United States was debating the adoption of a Title III of the Civil Rights Act of 1960 requiring registrars to preserve and maintain registration and voting records and produce such records on written demand from the Attorney General of the United States. As set out in answer to Interrogatory 15a, during the course of this debate the legislature of Mississippi introduced a bill in the Mississippi Legislature, and enacted it into law (Section 3209.6 as amended), permitting destruction of application forms, which were theretofore required by Mississippi law to be maintained as permanent public records. The effect of permitting destruction of sworn written application forms was to permit local county registrars in their discretion to deny, by destruction, to the federal government the best evidence available to detect and determine racial discrimination by such registrars. [fol. 1291] Plaintiff does not presently know the names, addresses and official capacity of persons who were instrumental in enacting the records destruction statute.

The plaintiff does not know which witness, if any, it will call to prove the allegations in paragraph 59 except regis-

trars of voters in the counties in Mississippi or former registrars.

The specific documents which will be used to prove this allegation are the sworn written application forms in the counties in Mississippi which show the absence of registration application forms prior to certain periods in the various counties. The factual information we have as to the date of the first form retained is described in Parts II by county of Appendix B, attached hereto, which is herein incorporated.

The factual basis for the claim that the statute permitting destruction of records is an integral part of a pattern and practice of discrimination is set out in answer to Interrogatory Number 15a (herein incorporated) which shows the legislative setting of the adoption of this statute.

The plaintiff does not presently know which, if any, witness it will call to prove this allegation other than the registrars and former registrars of voters in Mississippi. The documents to be used to prove the allegation of pattern and practice are the same as those to be used to prove the purpose of the statute.

[fol. 1292] Answers to Interrogatories Nos. 18e-18pp
State of Mississippi

Answers to Interrogatories Nos. 5a-b Wiggins
Answers to Interrogatories Nos. 7a-b Smith

The names and addresses and full background information on Negroes who have been, are being and will be deterred, hindered, prevented, delayed, harassed and who have had more difficulty in registering under the following statutes are set out in Appendix B, Part I, by county. (Incorporated herein.)

H.B. 900 requires the perfect application form as a prerequisite to registration.

H.B. 901 (which is not under attack in the Complaint) eliminates the designation of race in the poll books.

H.B. 905 provides space on the application form for the good moral character requirement.

H.B. 822 provides the procedure for publication of names of applicants in the newspapers.

H.B. 904 provides the procedure for challenging the good moral character.

H.B. 903 provides the manner in which the indication of whether or not applicant is accepted or rejected is placed on the form and directs the registrar not to give reasons for rejections because that might be assistance on subsequent application forms.

[fol. 1293] All of these bills are part of the package of legislation adopted shortly after the decision of the Court of Appeals in *U.S.* v. *Lynd.* (See Answer to Interrogatory No. 18.)

These bills have the effect of deterring, harassing, delaying, preventing Negroes from becoming registered voters because each applicant must now complete a letter-perfect application form, cannot be advised for at least a month (for publication, and a waiting period for challenges) of whether he has passed or failed, must return to the registrar's office to determine whether he has passed or failed, and if he has failed is not permitted to obtain the reason for such failure.

This legislation also makes it more difficult because of the perfect form requirement to become a registered voter. The burden of these new procedures is imposed principally on Negroes because at the time of the adoption of these new procedures a majority of the white people were registered to vote and were not required to comply with such procedure whereas less than 5 percent of the Negroes were so registered.

Plaintiff does not know which witnesses will be called to prove the deterrent effect of the 1962 legislation other than the registrars and former registrars of the counties in Mississippi.

[fol. 1294] Answer to Interrogatory No. 19a, State of Mississippi

Paragraph 69 of the Complaint does not allege that the defendant State has applied the requirements for registration for voting mentioned in paragraphs 66 and 69 of the Complaint. Insofar as the defendant State acts through its agents including the defendant registrars it has applied such requirements acting through its agents and officials as set out in answer to Interrogatory No. 18a-pp.

[fol. 1295] Answer to Interrogatory No. 19(b-g) State of Mississippi

The factual basis relied upon that the existence and use of the new registration requirements adopted in 1962 deters and deprives Negroes of the right to vote without distinction of race or color pursuant to a pattern and practice of discrimination is set out in answer to Interrogatory No. 18 (purpose). In addition, the information with respect to the Negroes and the specific occurrences of use of these requirements is set out in Appendix B, Parts I and III, which is attached and incorporated.

The pattern and practice of racial discrimination includes all of the events and occurrences described since the adoption of the new legislature in Appendix B, and in addition the adoption and use of these new onerous and unconstitutional requirements in a setting of white political supremacy in a segregated society where a majority of the white persons were registered to vote at the time of the adoption of the requirements and less than 5 percent of the Negroes who were so registered is and in and of itself a pattern and practice of discrimination.

[fol. 1296] Answers to Interrogatory No. 20(a-c) State of Mississippi

Plaintiff intends to charge that the affect of treatment accorded to Negroes who attempt to register as set out in Part I of Appendix B attached hereto operates as a deterrent to other Negroes from applying for and becoming registered voters.

[fol. 1297] Answer to Interrogatory No. 21 State of Mississippi

Answer to Interrogatory No. 16 Wiggins
Answer to Interrogatory No. 16 Smith

Plaintiff does not know what witnesses it presently intends to call on the trial of this case except the registrars and former registrars of voters in Mississippi. A list of the names and addresses of such witnesses and what we intend to prove by such witnesses will be furnished as soon as possible.

[fol. 1298] **Answer to Interrogatory No. 25 State of Mississippi**

Answer to Interrogatory No. 17 Wiggins
Answer to Interrogatory No. 17 Easley
Answer to Interrogatory No. 17 Smith

The plaintiff is willing to treat these interrogatories as continuing but will not make futher answer to each of them within 15 days after receipt of additional information, but will submit supplemental answers to these interrogatories periodically in an orderly form when such information is collected.

[fol. 1299] Answer to Interrogatory No. 2(e) Wiggins

Answers to Interrogatories Nos. 2(g-j) Smith

The full factual data and names of Negroes who were excluded from Democratic primary elections are set out in answer to interrogatories numbered 7(h-j) and herein incorporated.

Coahoma #2
Lowndes #32

[fol. 1300] Answers to Interrogatories Nos. 5(a-b) Smith

Paragraph 50 does not allege that defendant Smith has used the good moral character requirement as "an additional device with which to discriminate against Negroes". Plaintiff has no present information that defendant Smith has used the good moral character requirement to reject any applicant.

[fol. 1301] Answer to Interrogatory No. 6(a-c) Smith

Paragraph 60 does not charge defendant Smith with continuing to destroy application forms. Defendant Smith's first form is dated April 19, 1955, and the forms thereafter are continuous. Plaintiff presently intends to call no witness to prove that defendant Smith has destroyed and will continue to destroy application forms.

[fol. 1302] Answer to Interrogatory No. 9 Wiggins

Answers to Interrogatories Nos. 8, 9 Smith

The names, addresses, and full factual circumstances of persons denied the right to register to vote or were delayed harrassed are set out by county in Appendix B attached and incorporated.

[fol. 1303] Answer to Interrogatory No. 10 Smith

Part II of Coahoma County in Appendix B attached hereto and incorporated herein is an analysis of the Accepted and rejected application forms in Coahoma County. In this analysis plaintiff has indicated the distribution of certain constitution sections on a discriminatory basis, the assistance to white persons on the duties and obligations question, and the discriminatory grading of certain application forms of Negroes as compared with forms of white persons. Plaintiff's analysis is not complete enough at this time to list the name, address, and age of applicant and serial number of application of each accepted and rejected form which plaintiff will use to prove discriminatory selection of sections, assistance to white persons but not Negroes on questions 19 and 20 and discriminatory grading of the forms, but plaintiff will do so as soon as it can and submit the information in supplemental answers.

[fol. 1304] Answer to Interrogatory No. 11 Smith

Plaintiff does not presently know of any entries, errors or omissions on other than voting registration applications which it intends to use in the trial, nor does it presently believe that defendant Smith rejects applicants for errors or omissions on their forms.

[fol. 1305] Answer to Interrogatory No. 10 Wiggins

The names and addresses of Negroes in Lowndes County who have been delayed, prevented, hindered, harassed or discouraged from applying to register to vote and the full factual circumstance of each occurence is listed in Part I of Appendix B.

[fol. 1306] **Answer to Interrogatory No. 11 Wiggins**

Part II of Lowndes County in Appendix B attached hereto and incorporated herein is an analysis of the application forms filed in Lowndes County. The 563 white persons who received Section 1 to interpret since November 18, 1960, were offered opportunities to register not offered the Negro citizens who were required to interpret Sections 16 and 21 and other different sections. As set out in part II plaintiff believes that many of the white persons in Lowndes County were also assisted in interpreting the Constitution and giving a statement of duties and obligations. Plaintiff does not presently know the names and addresses of white persons it intends to call as witnesses who have been offered opportunities to register denied to Negroes but will furnish such a list as soon as plaintiff can.

The following Negro citizens of Lowndes County were denied opportunities to register to vote in Lowndes County which opportunities were provided white persons in that they were given more difficult sections to interpret and/or were given no assistance and/or were graded more particularly and rejected. See also Part I Lowndes County in Appendix B attached hereto and incorporated herein.

Name	Age	Occupation	Address
Alexander, Lillie S.	26	Housewife	724 19th St. N.
Ames, Castella H.	46	Housewife	609 10th Ave. S.
Brown, Fred Lee	39	Ins. Agent	1213 N 18th St.
[fol. 1307]			
Brown, Linward Lee	28	Student	Rt. 5, Box 20
Carter, Annie C.	45	Manager	1405 S. 6th St.
Carter, Nina L.	46	Housewife	1009 N 16th St.
Carter, Willis J. Jr.	20	College Std.	1009 N 16th St.
Carter, Willis J. Sr.	46	Labor	1009 N 16th St.
Clayborn, Dave	42	Labor	1517 9th Ave. N.
Darnell, Edward	23	Student	Rt. 5 Box 192 1mi. N. Blue Cutt Rd.
Fisher, Isaac M.	37	Teacher	712 12th St. N.
Glenn, James	66	Farming	10 miles No. of Columbus.
Johnson, Archie L. W.	48	Teacher	1203 S. 6th Ave.
Kimbrough, Dell	49	Barber	1509 N. 5th Ave.
Kimbrough, Mamie	48	Housewife	1509 N. 5th Ave.
Murray, Vernice M.	48	Teacher	724 17th St. N.
Smith, Mary Stanton	49	Cafe Operator	1215 S. 5th St.
Payton, Otis D.	33	Teacher	1813 23rd St. N.
Richardson, George W.	63	Barber	1609 9th Ave. N.
Stalling, Eulice	25	Cab Driver	1301 6th St. S.
Taylor, Vester, Jr.	21	Taxi Driver	½ mile West Highway 82.
Thornson, Jeddi J.	55		1219 6th St. S.

Name	Age	Occupation	Address
Tucker, B. C.	64	Meat Cutter	1014 Military St.
Wesbury, Sander E.	29	Truck Dr.	1602 23rd St. N.
Wheadon, Augusta A.	67	Housewife	802 N. 14th St.
Williams, Charles	39	Paint and body repair (Auto)	225 24th St. S.

[fol. 1308] Answer to Interrogatory No. 12 Wiggins

Part II and III of Lowndes County in Appendix B attached hereto and incorporated herein is an analysis of the application forms filed in Lowndes County. Part III lists Negroes who were as qualified as white persons registered to vote in Lowndes County. The answer to interrogatory No. 11 of defendant Wiggins lists additional Negroes who were as qualified as white persons registered in Lowndes County. Plaintiff does not presently know the names and addresses of white persons it intends to call as witnesses who have been registered to vote in Lowndes County and are no better qualified than Negro citizens denied registration, but will furnish such a list in supplemental answers as soon as it can.

[fol. 1309] Answer to Interrogatory No. 8 Easley

On January 22, 1962, Maria Teresa Cueller, a white citizen of Claiborne County, residing at 803 Church Street, Port Gibson, registered to vote at the office of the Circuit Clerk, Port Gibson, Mississippi. A white woman in the office, presumably the defendant Easley, told her where to sign her application form and also told her what her precinct was. The two women were in the office alone when this occurred. Plaintiff is still investigating and presently knows of no other instance in which this defendant or her alleged agents assisted white applicants in filling out application forms in respect to their precinct or where the applicant was to sign the application form.

[fol. 1310] Answer to Interrogatory No. 9 Easley

Plaintiff is not presently aware of any Negro citizens who have been denied the right to register to vote by this Defendant, or her alleged agents by the operation of House

Bill No. 900, the perfect form requirement. The rejected Negroes have not been told the basis for rejections, and it is believed that all rejects were denied on the basis of the interpretation test.

[fol. 1311] Answer to Interrogatory No. 10 Easley

Plaintiff does not presently know of any Negro citizen in Claiborne County who have been denied the right to appeal the registrar's decision under State law.

[fol. 1312] Answer to Interrogatory No. 11 Easley

All instances presently known to plaintiff of citizens of Claiborne County who were registered to vote prior to the 1956 re-registration being denied the right to re-register without formality are set forth with requested details in Part 1 of the Claiborne County, Appendix B.

The incidents are set forth in Part I, Appendix B as follows:

Page No.	Number Assigned to Negro Applicant
39–1	11014 (3 attempts listed) 11000 11005
39–2	11005 (2 attempts listed)
39–3	11005 11014
39–4	(entire page)
39–5	11014 (3 attempts listed) 11017
39–6	11005 (2 attempts listed)

[fol. 1313] Answers to Interrogatory No. 14 Easley

All instances presently known to Plaintiff of Negro citizens being delayed, prevented, hindered, harassed or discouraged from applying to register to vote on account of race or color by this Defendant or her alleged agents are set forth with requested details in Part I of Claiborne County, Appendix B. These incidents commence with the last item on page 39-1 and include all incidents on 39-2 and 39-3.

[fol. 1314] Answer to Interrogatory No. 15 Easley

Plaintiff presently is aware of the following white citizens of Claiborne County who have been afforded opportunities to register to vote by this Defendant or her alleged agents which have been denied to Negro applicants for registration:

A. Julius Gage Hynum, Route 1, Box 70, Port Gibson (October 26, 1961) was permitted by Mrs. Easley to have the section of the Constitution assigned him in front of him while interpreting it. He also asked and was told by her what to put as his answer to item 20.

B. Maria Teresa Cueller, who was told her precinct by Mrs. Easley and where to sign her name. (See Answer to Interrogatory 8 hereof for full details.)

Plaintiff knows of no Negro citizens of Claiborne County who have been told the answer to item 20, their precinct or where to sign their names. Negro registration experiences Plaintiff is presently aware of are set forth in Part I, pages 39-1 through 39-6.

Instances of two Negro citizens being denied by Mrs. Easley of the opportunity to look at their assigned section of the Constitution while they were interpreting it are set forth on page 39-6 for the Negro citizens assigned the numbers 11005 (first incident) and 11016.

[fol. 1315] Answer to Interrogatory No. 16 Easley

Plaintiff does not presently have sufficient information concerning the white citizens allowed or permitted to register to vote in Claiborne County by this Defendant or her agents to answer this interrogatory.

[fol. 1316] District of Columbia.

Before me, the undersigned Notary Public, personally came and appeared John Doar, Attorney, United States Department of Justice, who being by me first duly sworn, did depose and say:

That he is the person who has signed the above and foregoing Answers to Interrogatories of State of Mississippi,

J. W. Smith, Mrs. Pauline Easley, and T. E. Wiggins, in his capacity as Attorney for the United States Department of Justice and that the answers given over his signature are true and correct to the best of his knowledge.

John Doar.

Sworn to and subscribed before me this 30th day of August, 1963.

Linda K. Stores, Notary Public.

My Commission expires: 8/31/63.

(Seal.)

[fol. 1317] **Appendix A**

Information Prior to March 24, 1955

* * * * * * * *

[fol. 1318] This section deals with the experiences of Negroes who tried to participate in voting in Mississippi prior to March 24, 1955, the effective date of the Constitutional Interpretation Test. There are four major categories, which are:

1. Negroes who were required to read and interpret sections of the Constitution.
2. Negroes who encountered substantial delays by local registration officials in their efforts to become registered.
3. Negroes who were refused the right to apply for registration.
4. Negroes who were not permitted to pay their poll taxes.

The format of this section, which is also the format of Part I of the post-March 24, 1955 sections, is as follows:

The number in the left-hand column is an identifying number assigned to the particular Negro. This identifying number refers to the plaintiff's answer to interrogatories numbered 23 and 24 of the State of Mississippi. From this number the name, address, age, education and other back ground information, and the type of statement which the person gave can be located.

[fol. 1319] The next column involves the date of the particular occurrence, the official involved, and the results of the occurrence. The official capacity of white persons involved are noted by the designation "R" for Registrar. In case of sheriff or deputy, that is also indicated. Where no official capacity is indicated, the individual was an employee or agent of the sheriff or registrar and his or her precise official capacity is not known.

The paragraph which is on the right-hand side of the page is a statement of the factual circumstances involved in each occurrence. The place where the events occurred

are the registrar's office or the sheriff's office in the county seat of the county. The county seats are listed with each group of summaries.

Omissions, such as date, name of white persons in the office of the registrar or sheriff means that we do not have the specific information requested.

Interrogatories Number 7 of the State of Mississippi requests information from 1890 to 1952. In this section the events are arranged chronologically so that cut-off date for that particular interrogatory may be conveniently ascertained.

In Interrogatory Number 7, the request for information concerning the white primary is not included in this section. The white primary material is dealt with in a separate section.

[fol. 1320] NEGROES WHO WERE REQUIRED TO READ AND INTERPRET SECTIONS OF THE CONSTITUTION.

[fol. 1321] Clarke #59

County Seat: Quitman, Mississippi

12017	Early 1930's Rejected Registrar	Registrar asked him meaning of ex-post facto laws, who is governor of Miss., and other questions. He answered the questions and was rejected for registration.
12017	1930's Rejected Registrar	Registrar read section of law to him and he was then required to interpret the section. He was rejected.

[fol. 1322] Clay #29

County Seat: West Point, Mississippi

13002	1945 Rejected	He attempted to register in 1945 after he got out of the Army. Was given a section of "Miss. Law" to interpret. After giving his interpretation he was told he would be notified. He was never notified.

[fol. 1323] Forrest #68

County Seat: Hattiesburg, Mississippi

18047	Late 1930's Rejected Registrar	He went to the registration office to attempt to register and met Mr. Cox. Cox asked him if he knew due process of law. Mr. Hall thought Cox wanted him to recite it so he said "No." Cox told him to go study.

18066	1946 Rejected	He went to office of Circuit Clerk to register; clerk in the office refused, saying he would have to see Mr. Cox; he saw Cox the next day; Cox asked him a question concerning the name of a certain land title to which he replied he did not know, but could read and understand the constitution; Cox said, "You didn't answer the question, so I can't register you."
18017	1948 Rejected Cox-R	On his attempt to register he met Mr. Cox and told him that he wanted to register. Cox told him that in order to register he would have to know the constitution of Mississippi, and be able to repeat it by heart. Since he couldn't do that he left the office without being registered.
18006	1948 or 1949 Rejected Cox-R	He went to office of Circuit Clerk to register in 1948 or 1949; Mr. Cox asked if he knew the constitution, to which he replied he knew part of it; Cox said if he did not know it he could not register him, and refused to do so.
18013	1949 Rejected Cox-R	After re-registration was ordered in 1949 he attempted to re-register. When he went to the registration office in 1949, Cox asked him the definition of "due process" and "class assessment." Mr. Bourne tried to answer but Cox just shook his head and refused to let him register.
18004	1949 Rejected Cox-R	In 1949 he went to office of registrar, L. C. Cox. Cox asked him the meaning of "due process of law," and then told him he would not know

the answer anyway. Cox would not register him.

[fol. 1324]

18072	1/5/50 Rejected Cox-R	She went to the office of the registrar and told Mr. Cox she wanted to register; he asked if she knew the law of Mississippi, and she replied she was able to read it; Cox then asked what was due process of law, and she again said she would be able to read it; Cox said if she was unable to answer the questions, she could not register. She was not registered.
18066	Spring, 1950 Rejected Cox-R	He went to office of Circuit Clerk to register; Mr. Cox asked, "What is due process of law?", he indicated to Cox that he could read. Cox said he did not answer the question, and he could not register him.
18037	1950's Rejected Cox-R	Went to the Office of the Circuit Clerk to register; Mr. Cox asked him to explain due process of law; he did not know exactly what it meant and did not try to explain it; was not permitted to register.
18083	Spring, 1950 Rejected Cox-R	He went to the office of the Circuit Clerk with Oscar Tyler in order to register; Cox asked if he knew the Constitution of Mississippi, to which he replied he thought he did, but probably not to Cox's satisfaction; Cox said if he did not know the constitution he could not register.

18032	1950 Rejected Cox-R	Alfonso Clark went to register in Feb. 1, 1950 and Mr. Cox told him to come back at a later date. He returned later in 1950 with B. F. Bourne, Dr. C. W. Smith, Rev. C. P. Payne, E. H. Smith and N. R. Burger. Mr. Cox asked them to explain "due process of law." None of them satisfied Mr. Cox and none was registered. Alfonzo Clark had registered in the late 1930's and was returning to re-register because a re-registration was ordered in Forrest County in 1949.

[fol. 1325]

18013	1950 or 1951 Rejected Cox-R	He attempted to register in 1950 or 1951, accompanied by Dr. Charles Smith, Rev. C. P. Payne, E. H. Smith, Prof. N. R. Burger, Alfonso Clark, and Mrs. Arlena Bourn, all Negroes. They went into the Circuit Clerk's office and met Mr. Cox. They told Cox that they wanted to register. He asked them questions about provisions of the constitution and each of them gave him answers. Cox did not permit any of them to register.
18100	March, 1951 Rejected Cox-R	He went to the office of the Registrar and asked Mr. Cox if he could register; Cox asked him if he could read and explain the Constitution; he said he could read it, but he did not know if he could explain it to Cox's satisfaction; Cox then said he could not register.

18107	Nov. 1951 Rejected Cox-R	He went along with Robert Baker, B. F. Bourn, and A. M. Clark to the office of the registrar; told Cox he wanted to register; Cox asked him, "What is due process of law?", to which he repiled trial by jury and explained it; Cox said the answer was incorrect and he could not register him as he was not qualified.
18023	Early 1950's Rejected Cox-R	He went to the office of the registrar and asked Mr. Cox to register him; Cox asked him what was a land classification and other questions which he attempted to answer; he then asked Cox if he was required to answer these questions in order to register, to which Cox replied he was not running a catechism school and walked away.
18017	Early 1950's Rejected Cox-R	He went to the office of the registrar to register; Mr. Cox told him he had to know the Mississippi Constitution; he went home and studied the Constitution, then returned; Cox asked him the meaning of due process of law; he said he did not know, and Cox said he could not register.

[fol. 1326]

18121	Early 1950's Rejected Lady	She went to register. The lady behind the counter said she would have to wait until Mr. Cox came in. She waited about 15 minutes and then Mr. Cox came in, told her to read a section of the Constitution. She read it and then he told her to explain it. She did and he said she was wrong and could not register.

18056	Feb. 1952 Rejected Cox-R	Went to registrar's office with A. B. S. Todd, T. Hall, and John Freeman, all Negroes, for the purpose of registering: Cox asked if he knew the Constitution, and he said what he thought it was; Cox then told him to go back and talk to his attorney some more.
18079	Jan. 5, 1953 Rejected Cox-R	He attempted to register on January 5, 1953. He went to the registration office and spoke to Mr. Cox. He told Cox that he wanted to register. Cox asked, "Can you interpret the Constitution?" Rev. Mayes replied, "No!, and there is not an attorney in Hattiesburg, Mississippi who can." Cox refused to register him and so he left.

[fol. 1327] Pike #54

County Seat: Magnolia, Mississippi

57023	About 1935 Rejected Mrs. Holmes	Tried to register in Magnolia in about 1935. Was asked to read a section of the Constitution and tell its meaning. He was not registered.
57036	1953 Rejected Holmes-R	Went to registrar's office in Magnolia with Mildred Marie Williams in 1953. Asked to read section of Mississippi Constitution and interpret it. Told explanation not correct and he was not registered.
57034	Jan. 1953 Rejected Holmes-R	Went to registrar's office in Magnolia to attempt to register in January 1953. Asked to read section of Mississippi Constitution and orally interpret it. He was not registered.

[fol. 1328] Walthall #76

County Seat: Tylertown, Mississippi

74031	About 1946 Rejected Holmes-R	Holmes made him read and interpret a section of the Constitution of Mississippi and told him he did not pass. He was not registered.
74026	About 1946 or 1947 Rejected Holmes-R	He went alone to register. Holmes required him to interpret orally a section of the Constitution about the judicial branch and then told him he was not qualified. He was not registered.
74040	About 1954 or 1955 Rejected Byrd-R	She went alone to register in 1954 or early 1955. Byrd asked her oral questions about *expost facto* laws, the preamble of the Constitution, habeas corpus and impeachment; she answered them. Byrd said her answers were wrong, and declined to let her register.

[fol. 1329] NEGROES WHO ENCOUNTERED SUBSTANTIAL DELAYS BY LOCAL REGISTRATION OFFICIALS IN THEIR EFFORTS TO BECOME REGISTERED

[fol. 1330] Forrest #68

County Seat: Hattiesburg, Mississippi

18004	Apr. 11, 1952 Refused Woman	Went to Registrar's office on 4-11-52 in the morning. Female employee said Mr. Cox was out; would have to see him.
18006	April. 11, 1952 Refused Woman	Went with seven other Negroes on 4-11-52 to the office of the Circuit Clerk to register; Rush Lloyd asked to register; the lady said they would have to wait for Mr. Cox; Robert Baker asked if she were the lawful Registrar, she said he was an employee.
18007	Mar. 9, 1953 Refused Woman	He was told by lady at the Registrar's office on 3-9-53 that he would have to see Mr. Cox in order to register, but Mr. Cox was sick at home.
18009	Mar. 9, 1953 Refused Woman	Met Willie Darden at the courthouse on 3-9-53 and together they went to the office of the Registrar; a girl there said that Mr. Cox was in the courtroom and that she could not register them.
18013	Feb. 28, 1953 Refused Woman	Went on 2-28-53 with A. M. Clark, Rev. W. D. Ridgeway, Rev. J. J. Jones, and Vernon Dahmer to the office of the Circuit Clerk to register; lady there said Mr. Cox was not there, and they would have to see him in order to register.

18024	Feb. 1952 Refused Woman	Went with a group of Negro teachers during February, 1952 to the office of the Circuit Clerk to register; lady in the office said Mr. Cox was out and they would have to wait for him.

[fol. 1331]

18030	1952 or 1953 Refused Woman	She attempted to register in 1952 or 1953 and was accompanied to the registration office by a group of other Negro teachers including: Mrs. Addie Burger, Mrs. Katherine Jones, and Mrs. Jearldine Lattimore. They entered the Registrar's office and were met by a woman clerk. They told the clerk that they wanted to register, but the clerk told them that they would have to see Mr. Cox and he wasn't in his office at the time. When she asked if one of the clerks were deputized and could register people, the clerk merely said that Mr. Cox had to register them.
18030	1953 Refused Woman	On two occasions during 1953, she went into the registration office to attempt to register to vote. Each time a woman clerk told her that Mr. Cox was not there and that she would have to come back when he was there. On one of these occasions she was accompanied by Mrs. Iva Sandifer.
18032	Feb. 28, 1953 Refused Clerk	He went to the office of the Circuit Clerk on 2-28-53 along with Rev. W. D. Ridgeway, Rev. J. J. Jones, B. F. Bourne, and Vernon Dahmer, for the purpose of registering; a clerk there said that Mr. Cox was not in and that it was necessary to have Mr. Cox register them.

18035	Dec. 1951 Refused Woman	He went to office of Registrar during December 1951; asked lady in the office if he could register; lady said Cox was too busy and he should come back.
18035	Dec. 1952 Refused Woman	He went to office of Registrar during December 1952 to register; lady in the office said Mr. Cox was sick and he was the only person who could register him.
18035	Feb. 25, 1953 Refused Woman	He went to office of the Registrar on 2-25-53 for the purpose of registering; lady in office said Cox was sick and in the hospital.
[fol. 1332]		
18037	Nov. 1952 Refused Woman	He went to office of the Registrar during Nov. 1952 to register on the Fri. or Saturday before the election; lady in office told him to come back the following Wednesday, the day after the election.
18037	Feb. 28, 1953 Refused Woman	He went to office of the Registrar on 2-28-53 with B. F. Bourne, Rev. Ridgeway, Rev. Jones, and Alphonse Clark; told lady they wished to register; she said they would have to see Mr. Cox before they could register, but he was not in.
18038	Mar. 9, 1953 Refused Woman	He went to office of Registrar on 3-9-53. The lady behind desk said Mr. Cox was out and she could not register them.
18040	Winter 1950-51 Refused Woman	She went to office of Circuit Clerk to register; girl there said Mr. Cox was out of town and she would have to see him.

18040	Apr. 11, 1952 Refused Woman	She went with a group of Negroes to the Circuit Clerk's office on 4-11-52. They told two white ladies they would like to register. The ladies said Mr. Cox was out and would not be back until noon.
18040	Mar. 16, 1953 Refused Woman	She went to office of the registrar to register on March 16, 1953; lady there said Mr. Cox was out and that she could not register her; waited for a while, then left.
18041	Mar. 2, 1953 Refused Woman	He went to office of the Registrar on 3-2-53 with Rush Lloyd and Rufus Houze for the purpose of registering; lady there told them Mr. Cox was not in and it was necessary for them to see him in order to register.
18045	Mar. 12, 1953 Refused Woman	He went to the office of the Registrar on March 12, 1953 to register, lady said Mr. Cox was out; waited for a while, then left.

[fol. 1333]

18048	Feb. 1952 Refused Woman	Went to office of the Circuit Clerk during February 1952, with several other Negro teachers for the purpose of registering; a lady said they would have to wait to see Mr. Cox, who was not in at the time.
18056	Mar. 2, 1953 Refused Woman	He went to Circuit Clerk's office on 3-2-53 with Rush Lloyd and George Dennis for the purpose of registering; lady in the office said Cox was in the hospital and that it was necessary for them to see him.
18060	Sept. 1952-53 Refused Woman	He went to office of the Registrar in 1952 or 1953. A woman said that he would have to see Mr. Cox and that she could not register him, that Cox was the only one who could do it.

18064	Mar. 1953 Refused Woman	He went to the office of the Circuit Clerk during March 1953, to register along with A. M. Clark, B. F. Bourne, W. G. Ridgeway, and Vernon Dalmer; lady in the office told them that they would have to see Mr. Cox, who was not there.
18063	Apr. 11, 1952 Refused Woman	He went to Circuit Clerk's office on 4-11-52 with several other Negroes for the purpose of registering; two white ladies said they would have to see Mr. Cox who was out; they asked if she was a deputy clerk and one of the ladies said she was an employee.
18066	1948 Refused Clerk	He went to office of the Circuit Clerk in 1948 but the clerk refused to register him, saying he would have to see Mr. Cox.
18066	Jan. 31, 1951 Refused Woman	He went to office of Circuit Clerk to register on 1-31-51; lady there refused to register him, saying he would have to see Mr. Cox.

[fol. 1334]

18075	1949 Refused Woman	He went to office of Circuit Clerk to register in 1949; lady said he would have to see Mr. Cox; waited for two hours, then left since Cox had not returned.
18075	Apr. 11, 1952 Refused Woman	He went to office of Circuit Clerk on 4-11-52 with Savannah Davis, Kathryn Jones, Wayne Pittman, Charlie Phillips, V. K. Murphy, John Barnes, and Robert Baker, for the purpose of registering; lady said they would have to wait for Mr. Cox. They asked if she were a deputy and the lady said she was an employee.

18075	Mar. 2, 1953 Refused Woman	He went to office of Registrar on 3-2-53 with George Dennis and Rufus Houze; Mr. Cox was not in and one of the two ladies there said they would have to come back.
18078	Apr. 11, 1952 Refused Woman	He went to office of Circuit Clerk on 4-11-52 with several other Negroes for the purpose of registering. Lady said they would have to see Mr. Cox. They asked if she was deputized. The lady said she was an employee.
18083	1947 Refused Woman	He went to the office of the Circuit Clerk to register in 1947; lady in the office said she could not register him, that he would have to see Mr. Cox.
18083	1948 Refused Woman	He went to the office of the Circuit Clerk to register in 1948; lady in the office said she could not register him, that he would have to see Mr. Cox.
18083	1949 Refused Woman	He went to the office of the Circuit Clerk to register in 1949; lady in the office said she could not register him, that he would have to see Mr. Cox.
18092	Mar. 1952 Refused Woman	He went to the office of Registrar in about March 1952, but was told by a lady there that he would have to see Mr. Cox in order to register; Cox was not in so he left.
18096	Jan. 1953 Refused Woman	He went to the office of the Registrar in January 1953 and asked a girl there if he could register; she told him he would have to see Mr. Cox.

[fol. 1335]

18097	Apr. 11, 1952 Refused Woman	He went with several other Negroes on 4-11-52 to the office of the Circuit Clerk for the purpose of registering; Rush Lloyd told a lady there that they wished to register; the lady said they would have to see Mr. Cox; Robert Baker asked her if she were a deputy, the lady said she was an employee.
18098	Apr. 11, 1952 Refused Woman	He went to office of Circuit Clerk on 4-11-52 with several other Negroes for the purpose of registering; one of two ladies behind the counter said they would have to see Mr. Cox; they asked if she were a deputy, the lady replied, "We are employed here."
18100	Feb. or Mar., 1953 Refused Woman	He went to the office of the Registrar to register in February or March, 1953, accompanied by A. M. Clark, B. F. Bourne, Vernon Dahmer, and Rev. J. J. Jones. Lady in the office said they would have to see Mr. Cox, who was not there.
18105	Feb. 28, 1953 Refused Woman	She went to the office of the Registrar on 2-28-53 and told a lady there she wanted to register; the lady said she would have to see Mr. Cox, who was not there.
18107	Mar. 17, 1953 Refused Woman	He went to the office of the Registrar with his brother, E. H. Smith, for the purpose of registering on 3-17-53. A lady in the office said that Mr. Cox was not in and they would have to see him.

18108	Jan. 10, 1953 Refused Woman	He went to Registrar's office on 1-10-53 to register after having paid poll tax, but the lady there said Mr. Cox was not in and he would have to see him.
18108	Mar. 17, 1953 Refused Woman	Along with Dr. C. W. Smith, he went to the office of the Registrar for the purpose of registering on 3-17-53; lady there said they would have to see Mr. Cox, who was not there; so they left.

[fol. 1336]

18114	Jan. 23, 1953 Refused Rodgers	She went to office of the Registrar on 1-23-53 after having paid poll tax; told Miss Rodgers that she would like to register, but Miss Rodgers said she could not do it, that she would have to see Mr. Cox.
18128	1955 Refused Woman	He went to the office of the Circuit Clerk to register in 1955. A lady in the office told him he would have to come back when Mr. Cox was there.

[fol. 1337]

Hinds #49

County Seat: Jackson, Mississippi

25046	1920's Refused Registrar	He attempted to register before Registrar Fondren in the 1920's. Frequently Fondren would ignore him when he appeared to register. Other times he would say he was too busy. Finally, after Smith appeared almost every day for a six-month period, Fondren allowed him to register, saying he had "about fretted him to death."

[fol. 1338] Holmes #50

County Seat: Lexington, Mississippi

26021	1950 Refused Unknown	He went to the county courthouse to register during 1950. He was told that the lady that takes registration wasn't in.

[fol. 1339] Panola #4

County Seat: Batesville, Mississippi

54009	July 1946 Refused Clerk	Went to courthouse to register in July 1946. Was questioned by Sheriff Fowler about discharge from army and persons he knew in the county. When Fowler took him into registrar's office lady clerk left. He waited about half an hour and the lady clerk would look into the office, but did not come in while he was there. He left the office and the lady clerk went back in.

[fol. 1340] NEGROES WHO WERE REFUSED THE RIGHT TO APPLY FOR REGISTRATION

[fol. 1341] Carroll #9

County Seats: Carrollton, Mississippi, Vaiden, Mississippi

8001	1940 Refused Hatcher-R Carrollton	During 1940 he asked Circuit Clerk if he could register to vote, and was told he could not register.
8005	1951 Refused Hatcher-R Vaiden	He asked Chancery Clerk about registering in 1951 and was referred to Circuit Clerk Hatcher who told him that the time was not right, that he would talk it over with the Chancery Clerk Bennett.

8001	1954 or 1955 Refused Hatcher-R Carrollton	During 1954 or 1955, he asked Circuit Clerk if he could register to vote. He was told he could not register and old Negroes were not being registered.

[fol. 1342] Chickasaw #27

County Seat: Okolona, Mississippi

9013	1947 or 1948 Circuit Clerk	In 1947 or 1948 on the same day he tried to pay his poll tax. He went to the Circuit Clerk and attempted to register. The Circuit Clerk said he should not try to register as he will make enemies for himself. He then left without trying.

[fol. 1343] Clarke #59

County Seat: Quitman, Mississippi

12017	1932 Refused Harger-R	On two occasions the registrar told him that he was getting ready for and busy with court and to come back.
12017	Refused Harger-R	Applied with Tommy Blakely, another Negro. Registrar advised them not to try to register because of what "the people" would do. They left without applying.
12017	Refused Massengale-R	When he applied the registrar told him he was "too busy" to register him.
12006	1953 Refused Ramsey-R	We went to the office of the Circuit Clerk in 1953; told Mr. Ramsey that he wanted to register; Ramsey replied that they were not ready for registration and refused to permit him to register.

[fol. 1344] Copiah #47

County Seat: Hazelhurst, Mississippi

15026	About 1952 Refused Weeks-R	He was told by Circuit Clerk that he didn't have any registration books at the time for colored people.
15039	1952 Refused Weeks-R	He went to see Mr. Weeks in 1952 with poll tax receipt, and asked to be registered. Weeks told him that registration books were closed to colored people.
15016	1952 Refused Weeks-R	In 1952, he was told by Weeks that books were closed and that he should come back another year.
15026	About 1953 Refused Weeks-R	Was told by Circuit Clerk that he didn't have any registration books for colored people at that time.
15016	1953 Refused Weeks-R	He was told by Mr. Weeks that books were closed in 1953.
15016	1954 Refused Weeks-R	In 1954, he was told by Mr. Weeks that books were closed.
15026	About 1954 Refused Weeks-R	He was told by Circuit Clerk that he didn't have any registration books for colored people at that time.
15002	12/54 or 1/55 Refused Weeks-R	He was told in December '54 or January 1955 by Weeks that he could not register because he, Weeks, had to get a new registration book.

[fol. 1345] De Soto #3

County Seat: Hernando, Mississippi

17005	15 to 20 yrs. ago Refused	He was simply told that he could not register.

[fol. 1346] Forrest #68

County Seat: Hattiesburg, Mississippi

18047	1939 Refused Cox-R	He attempted to register accompanied by his uncle (now deceased) E. W. Hall during 1939. His uncle said to Cox that he would like to get Mr. Hall registered. Cox said, "No" so they walked out.
18079	1940 1951 or 52 Refused Cox-R	Between about 1940 and '52, he tried to register on nine different occasions. Each time he went alone and each time he saw Mr. Cox because he knew that none of the help would register him. He went at poll tax paying time. Each time he asked Cox if he could register, Cox just said "No" as if he didn't have time to discuss it with him.
18076	1945 Refused Cox-R	She went to office of Circuit Clerk, Mr. Cox, during 1945 for the purpose of registering; Cox refused to register her without stating a reason.

18103	Late 1940's-1954 Refused Cox-R	Between the late 1940's and 1953 or 1954, he attempted to register on three or four occasions. On two occasions he met Mr. Cox in the registration office and told him that he wanted to register. Cox told him to come back in a few weks. And when he went back, Cox again said the same thing: come back in a few weeks. On the other occasions, Cox was not in and a woman clerk told him that he would have to come back when Cox was there. In 1953 or '54, when he went in for another try, Cox opened the registration book on the counter in front of them and asked him his name and address. But then he simply said that he couldn't register him and did not give him any reason.

[fol. 1347]

18037	1949 Refused Cox-R	He was registered prior to 1949, but was required to re-register in 1949. The deputy clerk had begun filling out his cards and he was about to complete them when Mr. Cox came into the office, observed him registering, and said, "Just a minute, I want to talk to him"; Cox then took him out in the hall and told him that he could not register.
18063	1950 Refused Cox-R	She went to office of Circuit Clerk to register during 1950; Clerk said she would have to see Mr. Cox who was not in; saw Cox within three days; he said he could not register her without stating a reason.

18061	Early 1950's Refused Cox-R	He went to register each year since at least 1950 and was told that Mr. Cox was not in. When Mr. Cox was in Cox would tell him he was too busy to register him. On one of these occasions Mr. Cox told him that Negroes did not need to register because they did not know what they were voting for anyway.
18033	About 1950 Refused Cox-R	In 1950, Mr. Clark attempted to register twice. The first time he went to the office, he met a group of Negroes in the hall and they told him that Mr. Cox wasn't there that day and therefore they couldn't register. A few weeks later, Mr. Clark returned to the office. He spoke to a woman clerk in the office and told her that he wanted to register. She called Mr. Cox. Cox came to the door and asked Clark what he wanted. When Clark told Cox that he had come to register, Cox said "I'm feeling bad. I don't have time to discuss it. You come back." Mr. Clark left and never returned to the office.

[fol. 1348]

18017	Early 1950's Refused Cox-R	He went to the office of the Circuit Clerk to register in the early 50's, but Cox said he was in a lawsuit and would not register anybody until it had been settled.

18012	1948-1954 Refused Cox-R	Mrs. Bell made between two and five attempts to register between the years of 1948 and 1954. Before *Peay* v. *Cox* was filed, the clerk in the office simply told her to see Mr. Cox and he, Cox, was never in when she was there. After 1950, she saw Cox, and he told her to wait until after the suit was over.
18009	2/1950 Refused Cox-R	He went to the courthouse during Feb. 1950 and asked Mr. Cox to register him; Cox said, "I told you niggers I wasn't going to register you"; he left.
18130	About 1951 Refused Cox-R	He went to register with two other Negroes, Joe Knox and Claude Harris. All were on the Board of trustees for the consolidated Negro school. Mr. Cox told them the books were not open for registration—to come back later.
18050	About 1951 Refused Cox-R	He went to the office of the Circuit Clerk with C. M. Davis around 1951; Mr. Cox would not permit them to register, and did not give them a reason.
18072	1/5/52 Refused Cox-R	She went to the office of the Registrar to vote, accompanied by Alma May to register. Mr. Cox refused to register them without giving them a reason.
18078	1/1952 Refused Cox-R	He went to Circuit Clerk's office during January 1952 to register; Cox refused, saying he could not register him, but gave no reason.

[fol. 1349]

18022	2/1952 Refused Cox-R	He went to office of the Circuit Clerk during February 1952 with a group of Negro teachers, Ratio Jones, Kathryn Jones, M. W. Chambers, B. M. Tillman Nimock, Martha Hall, and Nanelle Burnett, for the purpose of registering; Mr. Cox told them there were charges on the docket against him and he could not register them.
18075	2/1952 Refused Cox-R	He went to office of Circuit Clerk with Alfonso Clark, Dr. E. H. Smith, B. F. Bourne, and Rufus Houze during February 1952; told Cox they wanted to register; Cox told them to wait until the suit was over.
18066	2/1/52 Refused Cox-R	He went to office of the Circuit Clerk on 2/1/52 along with a group of Negro teachers; Mr. Cox said he could not register them until the suit filed against him had been settled; Cox left without registering any in the group.
18063	2/1/52 Refused Cox-R	He went to the office of the Circuit Clerk to register along with a group of Negro teachers on 2/1/52; Mr. Cox said he could not register them until the suit filed against him had been settled; Cox left without registering any in the group.
18056	3/1952 Refused Cox-R	He went to office of Circuit Clerk during March 1952 with Rush Lloyd, E. H. Smith, and George Dennis to register; Cox did not permit them to do so without stating any reasons.

18076	4/11/52 Refused Cox-R	She went to office of Circuit Clerk to register on 4/11/52, 2 white girls said Mr. Cox was out but would be back in a few minutes; when Cox arrived, she told him she wanted to register; he asked her name and how long she had been living at her present address, then said he could not register her and that she should see Judge Dale.

[fol. 1350]

18023	9/1952 Refused Cox-R	He went to the office of the registrar in September 1952 and asked Mr. Cox to register him; Cox refused to do so saying that there was a case pending against him and he could do nothing about registering Negroes until the outcome of that case was known.
18105	12/20/52 Refused Cox-R	She went to the Registrar's office along with Mrs. A. N. Burger, Miss A. J. Latimore, and Miss S. L. Williams, to register; told Mr. Cox they wanted to register; he replied that they had a suit against him. She told him she was not connected with the suit but he refused to register them. She asked how she could get registered and he said he would not serve as her counsel and walked away.
18071	12/52- 1/53 Refused Cox-R	Accompanied by Ira Sandifer, Sadie Williams, and Addie Burger, she went to the office of the Registrar to register during December 1952 or Jan. 1953; Mr. Cox said he could not register them, and made a reference to a court action which was pending.

18030	1953 Refused Cox-R	Accompanied by a group of teachers including Mrs. Addie Burger, she went to the registration office to try to register during 1953. They met Mr. Cox and told him that they wanted to register. He replied, "Wait until the suit you people have against me is over." When one of them said that no one in that group had a suit against him, he simply said, "Yes, but wait 'til it's over." So they left the office.
18013	1/1953 Refused Cox-R	He went to office of Circuit Clerk with A. M. Clark, E. H. Smith, and two others to register during January 1953; lady in Mr. Cox's office said Cox was out and they would have to see him, that she could not register them; When Cox came in he said he would not register them because of a suit filed against him.

[fol. 1351]

18022	12/1952 or 1/1953 Refused Cox-R	Accompanied by Iva Sandifer, Anna J. Latimore, and Sadie Williams, she went to the office of the Registrar, Mr. Cox, and asked him to register them during December '52 or Jan. '53; Cox said there was a case on the docket and he could not register them.
18032	1/1953 Refused Cox-R	Went with Rush Lloyd, B. F. Bourne, and E. H. Smith to the office of the Circuit Clerk to register during January 1953; asked if they could register, Cox said they had a case against him and he could do nothing until it was settled; they replied they thought the case was settled, but he said it was not and they should come back when it was.

18035	1/1953 Refused Cox-R	He went to office of Registrar to register during January 1953; Mr. Cox asked him where he worked, where he lived, and for how long, then told him to come back. He was not registered.
18035	1/1953 Refused Cox-R	He went to office of Registrar in January 1953; told Cox he would like to register; Cox said he could not register him but would not tell him why he could not.
18060	1/1953 Refused Cox-R	He went to the office of the registrar to register during January, 1953. Mr. Cox asked his age, where he lived, and where he worked, then said he would have to wait because of the lawsuit pending against him.
18108	1/1953 Refused Cox-R	He went to the office of the registrar during January 1953 with B. F. Bourne, Rush Lloyd, and A. M. Clark, for the purpose of registering; arrived at the office about 9:00 A.M. and told a lady there what they wanted; she said they would have to see Mr. Cox; they waited until noon. Cox came in, at which time he said their case was in court and they would have to wait.

[fol. 1352]

18007	1/8/53 Refused Cox-R	He went to the office of the registrar to register on 1/8/53; lady there said he would have to wait to see Mr. Cox, which he did; when Cox came in he told Barnes that he could not register because he was one of those who had filed a case against him; Barnes said he thought the case had been dropped, but Cox said it was still pending and he could not register him.

18027	1/31/53 Refused Cox-R	He went to the office of the Registrar to register on 1/31/53; a girl there said he would have to wait to see Mr. Cox which he did; when Cox came in he told him to come back next month; he asked if he was being refused because he was in the suit and Cox shook his head; Cox then asked where he lived, where he worked and for how long, then went back to his desk without registering him.
18129	Feb. 1953 Refused Cox-R	He went to the office of the Registrar in February 1953 with Mrs. Addie Burger, Miss Iva Sandifer and Miss A. J. Latimore, in order to register. Mr. Cox told the group that he could not register them because of the case pending against him.
18072	2/28/53 Refused Cox-R	Mrs. Lewis went to the office of the Registrar, with Henrietta Stevenson, to register on February 28, 1953; a lady there said they would have to wait for Mr. Cox, which they did; when Cox came in he told them to wait about a month then come back; he said they would have to wait until the suit was over before they could register.

[fol. 1353]

18114	2/28/53 Refused	Went in February with Iola Lewis to the office of the Registrar, but they were told that Mr. Cox was out so they left; returned on February 28, 1953 and asked a lady there if they could register; she told them they would have to wait for Mr. Cox. When Cox came in he told them to come back in a month because they had a suit coming up; they said that they had no part in the suit; Cox replied, "Well, you live down there with them"; Miss Stevenson then said she wanted to register from another precinct where she lived and taught eight months out of the year, but Cox still said that they had to wait until the suit was over.

[fol. 1354]

18060	3/9/53 Refused Cox-R	He went to register at the office of the Registrar on 3/9/53; Cox asked him where he lived and worked, then said he could not register him because of the lawsuit.
18110	3/9/53 Refused	She went to office of the Registrar on 3/9/52 with her son, Grover Wilson Smith, to register; told Mr. Cox she wanted to register; he asked her name and how long she had lived there, then said there was a suit coming up and they would have to wait and see.
18109	3/9/53 Refused Cox-R	He went with his mother, Mrs. M. C. Smith, to the office of the Registrar on 3/9/53; told Cox they wanted to register; Cox asked Mrs. Smith her name and how long she had lived there, and then said they would have to wait to see how the suit came out.

18007	3/11/53 Refused Cox-R	He went to the office of the Registrar and asked Mr. Cox to register him on 3/11/53; Cox told him he could not register him because of the case pending against him.
18096	3/14/53 Refused Cox-R	He went to the office of the Registrar on 3/14/53 and asked Mr. Cox if he could register; Cox said he had a case against him in court; Peay said there was no case, as the time had run out, but Cox said he would have to wait a while; Peay then asked what a citizen had to do to be registered in Forrest County, to which Cox replied he did not know, he was not a school master; Peay then left the office.

[fol. 1355]

18092	3/15/53 Refused	He went to the office of the registrar to register; lady there said Mr. Cox was out drinking coffee, and he would have to see him; waited for a while, then left; returned the next day (3/16/53) and told Mr. Cox he wanted to register; Cox questioned him then said he could not register him because of a suit pending against him.
18128	1955 Refused Cox-R	He went to the office of the Circuit Clerk and told Mr. Cox he wanted to register; Cox said Negroes do not register in Forrest County.

[fol. 1356]

George #77

County Seat: Lucedale, Mississippi

20003	About 1954 Refused	About 1954 he went alone to the office to attempt registration. He was told that they had to get some papers from Jackson before they could register Negroes.

20004	About 1951 Refused Rouse-R	She went with her husband to register about 1951. They were told by Mr. Rouse that he could not register them because the box was locked up.
20015	Early 1950's Refused Rouse-R	Mr. Rouse told him and his wife that Hugh Goff was chairman of a committee to examine applicants and that Goff would notify them when to come back. They were never notified.
20015	Early 1950's Refused Mrs. Lovellette	In the early 50's, when he and his wife attempted to register, they were told that no provision had been made for registering colored.
20015	About Jan. 1952 Refused Rouse-R	About January 1952, Mr. Rouse told him and his wife they had not set up any machinery for registering colored people.
20015	Mid 1950's Refused Dale-R	Dale told him and his wife that they were not set up for registering colored.
20015	Probably 1955 Refused Rouse-R	Mr. Rouse told him and his wife they were not registering white or colored because some law was being formulated in Jackson and he had to wait until that was handed down.
20016	1952 to 1959 Refused Rouse Dale-R or Mrs. Lovellette	Nearly every year starting with 1952 she and her husband attempted registration about tax paying time. Each time they were not allowed to register. (Additional details in husband's experience No. 20015 above.)

[fol. 1357]

20026	Late 1940's Refused Malone-R	He went to the office in the late 40's shortly after getting out of the Army to attempt registration. Malone said he was not registering colored.

20026	Early 1950's Refused Rouse-R	In the early 50's, he went to the office to attempt to register. Rouse told him he was not registering anybody.
20026	Early 1950's Refused Rouse-R	In the early 50's he went to the office to attempt to register. Rouse said he could not register him, that he had to wait until he heard from Jackson about a change in the law.
20027	1952 Refused Rouse-R	When he went to register in 1952 he was told he had come too late to register. Mr. Rouse said the deadline for registration had passed the previous Saturday.
20040	Mid 1950's Refused Rouse-R	He went alone to the office to attempt registration. Rouse brought him back to where all the books were kept. Rouse pointed at some locked boxes and said, "you see, they are closed and I don't have a key."
20040	Early or mid 1950s Refused Rouse-R	He went to the Circuit Clerk's office to attempt registration. D. A. Phillips, another Negro was there when he arrived but left. Rouse refused to register him, saying it was closed.

[fol. 1358]

Holmes #50

County Seat: Lexington, Mississippi

26021	1950 Refused Jorden-R	In 1950 he went to the county courthouse on three occasions to register. Each time he was not permitted to apply. The registrar told him the books were closed.

[fol. 1359] Jasper #60

County Seat: Bay Springs, Mississippi

31009	Feb. 1955 Refused	In February, 1955 (after paying the 1954 and 1955 poll taxes), he attempted to register to vote in Jasper County. He went to Paulding and was told that the Registration Book was in Bay Springs. He then went back to Bay Springs and was told that the book was in Paulding. He went back to Paulding and was again told that he was unable to register because the Registration Book was not there.

[fol. 1360] Lauderdale #62

County Seat: Meridian, Mississippi

38006	About 1950 Refused Man	Went alone to register. Clerk told Mrs. Clark to "See an attorney." She did not do so.

[fol. 1361] Leflore #11

County Seat: Greenwood, Mississippi

42045	20-30 yrs. ago Refused	Applied 3 times between 20 and 30 years ago; was told each time that Negroes could not register.

[fol. 1362] Marshall #18

County Seat: Holly Springs, Mississippi

47016	About 1947 Refused Man and Woman	About 1947, he went to office with about 10 other Negroes, all students at Mississippi Industrial College. Official said they were not eligible to register and none were permitted to register.

47032	Mid 1940's Refused Mrs. Coffey-R	In the mid 40's, he went to register four times in a two-week period with groups of 8 or 10 Veteran students. Each time the Clerk would say books were closed.

[fol. 1363] Newton #64

County Seat: Decatur, Mississippi

51006	1949 Refused Webb	In 1949, he went to registrar with 3 other veterans. Mr. Webb told them, "Can't register you boys now."

[fol. 1364] Sunflower #12

County Seat: Indianola, Mississippi

67110	Spring of 1954 Refused Clerk or Asst. Clerk	He went to Registrar's office in the Spring of 1954 and was not permitted to apply to register to vote. Clerk said he'd notify him when he could apply. He was never notified.

[fol. 1365] Walthall #76

County Seat: Tylertown, Mississippi

74039	Early 1940's Refused Sartin-R	She came to apply to register in the early 1940's. Sartin refused to permit her to apply.
74021	About 1948 Refused Holmes-R	He went with two other Negroes to register around 1948. Holmes did not permit them to apply for registration.
74000	About 1950 Refused	He went to register with two other Negroes. The registrar had one (not Ball) read from a book and then told all to leave as they were not qualified.
74006	Over 10 years ago Refused Byrd-R	He went to register with John Ball and Angus Magee. Byrd required one of them to read; said none was qualified and did not allow any of them to register.

74014	Over 10 years ago Refused Byrd-R	He went with a large group of Negroes, led by his father, Ernest Guy. The registrar asked his father to name all 48 states. The registrar then said, "You niggers can't register."
74017	Late 1940's Refused Byrd-R	He went to register on a Saturday during the late 40's. Byrd asked him where he lived and who had been talking to him about registering. Then Byrd told him to study the Constitution but refused to register him.
74020	About 1950 Refused Holmes-R	Went with John Ball and another Negro. Holmes asked him to read the Constitution and said, "you don't know what you want," and refused to let them register.
74021	In 1940's Refused	He went with several Negroes including Ernest Guy. Registrar asked Guy to name all 48 states, then said "you niggers aren't qualified" and refused to permit them to register.
74040	About 1950 Refused Byrd-R	She tried to register alone around 1950. Byrd told her to go to get a Mississippi Constitution and read it and come back at a later time. Byrd did not permit her to apply.

[fol. 1366] Webster #23

County Sat: Eupora, Mississippi

78001	10-15 yrs. ago Refused Cir. Clk's Wife	Went to office of Circuit Clerk (Eidson) and spoke to his wife about applying. She said colored folks are not allowed to vote. He left.

[fol. 1367] NEGROES WHO WERE NOT PERMITTED TO PAY THEIR POLL TAXES

[fol. 1368] Chickasaw #27

County Seat: Houston, Mississippi

9002	1946 Sheriff	In 1946 he mailed a check to Sheriff of Chickasaw County for poll tax. Check never returned nor amount deducted from account.
9006	About 1954 Blake (Dep. Sh.)	Around 1954 he and five other Negroes attempted to pay their poll tax at the Sheriff's office in Houston. The other Negroes were his wife, Mrs. Jones, Mr. and Mrs. Winston Gladney, and his wife's aunt and uncle, Mr. and Mrs. Hudelston. Mr. Blake, a Deputy Sheriff told the woman who was collecting taxes not to take their money because they were not going to be allowed to vote. They were not permitted to pay their poll taxes.
9010	About 1947 Payton	He paid property tax and two dollars extra for poll tax to Clint Payton. Was not given a separate poll tax receipt. Objected and Deputy Sheriff Bryant started to write out a receipt. Mr. Payton stopped him saying, "We don't give niggers poll tax receipts."
9013	1947 or 1948 Wright	Tried to pay his poll tax in 1947 or 1948 along with his property tax to Mr. Wright who was collecting taxes in the Sheriff's office. Wright said he would have to check with the Sheriff before he could take the poll tax.

9014	1952 or 1953 Payton	He paid property tax to Deputy Sheriff Bryant in about 1952 or 1953 and was asked if he wanted to pay poll tax and register. Bryant took him to Mr. Payton, a Clerk, who told Bryant that he was not allowed to pay his poll tax or register.
9017	About 1954 Blake (Dep. Sh.)	Around 1954 she and five other Negroes attempted to pay their poll tax at the Sheriff's office in Houston. The other Negroes were her husband, Brazil Jones, Mr. and Mrs. Winston Gladney, and Mr. and Mrs. Hudelston. Mr. Blake, a Deputy Sheriff, told the woman who was collecting taxes not to take their money because they were not going to be allowed to vote. They were not able to pay the tax.

[fol. 1369] George #77

County Seat: Lucedale, Mississippi

20013	6-17-39 Re-Reg. Mrs. Ward	About 1956, he tried to pay his poll tax and was told by Mrs. Ward in the tax office that she did not know anything about Negroes paying poll tax.
20024	About 10 yrs. ago Unknown	Tried to pay poll tax over 10 years ago and was not allowed to do so.

[fol. 1370] Holmes #50

County Seat: Lexington, Mississippi

26031	1941 Unknown	He went to the Sheriff's office to pay poll tax and was told that his name was not on the list. He was not permitted to pay his poll tax.

[fol. 1371] Issaquena #40

County Seat: Mayersville, Mississippi

24012	Jan. 1946 Johnson (Sheriff)	In January 1946 after discharge from Army he went to Sheriff's office to pay poll tax so he could vote. He was accompanied by William Barnes, now deceased. Woman told him to wait for Sheriff. The Sheriff told them that they could pay the tax but that it "would be like throwing your money away because Negroes were not voting in Issaquena County". They thanked him and left. He has made no further attempts to pay the tax or register.

[fol. 1372] Panola #4

County Seat: Batesville, Mississippi

54027	About 1950 Lady	Prior to 1950 when she paid her land taxes in Sheriff's office she was assessed for poll taxes which she paid. In about 1950 she went to Sheriff's office and tried to pay poll tax. The lady in the office told her there was no need to pay because she wasn't going to vote anyway.

[fol. 1373] Simpson #57

County Seat: Mendenhall, Mississippi

64009	1951-1954 Mullen (Sheriff)	He tried to pay his poll tax each year from about 1951-1954 when he paid his land tax. The Sheriff told him he was not collecting poll tax on the dates when he paid his land taxes.

[fol. 1374] Tallahatchie #6

County Seat: Charleston, Mississippi

68005	About 1953 Refused Female (Clerk)	He, Robert Kegler, Grafton Gray and David Allford went to pay their poll tax in about 1953. The lady clerk said they would have to see Sheriff Strider, but he was not in the office.
68012	Dec. 1954 Clerk	In about December 1954, he was told by the lady that he could not pay his poll tax "just now". Robert Kegler, a Negro, was with him at this time.
68016	1951 Refused Dep. Clk.	In about 1951 he and Rev. Leslie Terry attempted to pay their poll tax. They were told by the deputy that they had to see the Sheriff. They looked for the Sheriff and did not see him.
68016	1952 Refused Dep. Clk.	In about 1952 or 1953 he, David Allford, Robert Kegler, and Floyd Bochair attempted to pay poll tax. They were told to see the Sheriff.
68018	1940's Refused Tax. Col.	In the 1940's, she was told by a tax collector that she did not need to pay her poll tax.
68037	Jan. 1951 Dep. Sh.	In January 1951, he and Grafton Gray were not allowed to pay poll tax because they were told the "main man" wasn't in.
68040	About 1954 Refused Strider (Sheriff)	In about 1954 he told the Sheriff at an auction sale that he intended to pay his poll tax since he had read the Sheriff's ad urging everyone to pay. The Sheriff told him the ad was not referring to him.

[fol. 1375] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

[Title omitted]

Civil Action No. 3312

ANSWERS TO INTERROGATORIES OF STATE OF MISSISSIPPI: MRS. PAULINE EASLEY, CIRCUIT CLERK AND REGISTRAR OF CLAIBORNE COUNTY; J. W. SMITH, CIRCUIT CLERK AND REGISTRAR OF COAHOMA COUNTY; T. E. WIGGINS, CIRCUIT CLERK AND REGISTRAR OF LOWNDES COUNTY—Filed September 3, 1963.

Appendix

[fol. 1376] Appendix B

Information by County
After March 24, 1955

[fol. 1377] Bolivar County #1

Part I

A

The following Negro citizen of Bolivar County was not permitted to apply to register to vote at the Circuit Clerk's office in Bolivar County.

6011	12/57 Refused Registrar	Went in to register; Registrar refused to give him form saying, "You've been here before. It will be 6 months or a year before you can register." Went in with wife and mother-in-law.

[fol. 1378] Coahoma #2

Part I

A

The following Negro citizens of Coahoma County were delayed in applying or not permitted to apply to register to vote. All events described below occurred at the Circuit Clerk's office in Coahoma County. In Coahoma County the deputy clerk registers white persons.

14009	6/29/61 Refused Delay Smith-R	He went to office of Circuit Clerk. Informed Mr. Smith he wished to register. Smith gave him an application form and a section of the Mississippi Constitution to write and interpret. After he had completed the form, Smith told him his interpretation of the section was wrong and consequently he had failed. Smith also said he would be very busy for a week, but he could return any time after that.

14043	July, 1961 Delay Smith-R	She went to office of Circuit Clerk to register. Spoke to white lady who said the clerk would see her but was busy at the time. After a 10 minute wait, about 3:30 p.m., the clerk came and told her he could not take any more people that day, and she should come back the next week.
14024	Aug., 1961 Delay Smith-R	She went to office of Circuit Clerk. Told Mr. Smith she would like to register. Smith said the Circuit Court was in session and he did not have time for her. Smith said she should come back.
14013	7/23/62 Delay Unknown	Went to register and was told that the Circuit Clerk was in Court.

[fol. 1379]

14037	7/23/62 Delay Unknown	Went to register and was told that the Circuit Clerk was in Court.
14044	7/23/62 Delay Unknown	the Circuit Clerk was in Court. Went to register and was told that
14045	7/24/62 Delay Unknown	Went to register and was told that the Circuit Clerk was in Court.
14046	7/24/62 Delay Unknown	Went to register and was told that the Circuit Clerk was in Court.
14040	7/24/62 Delay Unknown	Went to register and was told that the Circuit Clerk was in Court.
14012	7/25/62 Delay Unknown	Went to register and was told that the Circuit Clerk was in Court.
14036	7/26/62 Delay Unknown	Went to register and was told that the Circuit Clerk was in Court.

14042	7/29/62 Delay Unknown	Went to register and was told that the Circuit Clerk was in Court.
14034	8/20/62 Delay Unknown	Went to register and was told that the Circuit Clerk was in Court.

[fol. 1380] B

The following Negro citizens of Coahoma County were not registered to vote because they did not interpret the Constitution to the satisfaction of the registrar. All events described below occurred in the Circuit Clerk's office in Coahoma County.

14023	6/14/61 Refused Smith-R	She went to office of Circuit Clerk to register. Spoke to Mr. Smith who asked her to have a seat for a few minutes, as he was presently busy. After a few minutes, Smith gave her an application form to fill out and Section 126 of the Miss. Constitution to write and interpret. When she had finished, Smith told her she had failed and should try again.
14002	6/23/61 Refused Smith-R	She went to office of Circuit Clerk and told Mr. Smith she wished to register to vote. Smith gave her an application form and a section of the Mississippi Constitution to write and interpret. When she had completed the form, Smith told her that her interpretation was "too simple" and incorrect. Upon query he said she could come back the next day.

[fol. 1381] Coahoma County #2

Part II

Application Forms

1 & 2. Number of Application Forms

There are 2425 forms in Coahoma County dating from 4-19-55 to 6-28-62. The following is a breakdown of the forms showing how many persons were registered each year by race.

	Accepted		Rejected	
	White	Negro	White	Negro
1955	316	31	3	11
1956	150	20	3	22
1957	134	22	1	22
1958	183	28	0	40
1959	321	12	1	14
1960	198	39	0	20
1961	277	27	0	17
1962	320	15	14	164
Total	1,899	194	22	310

3. Analysis of the Forms

a. Discriminatory Selection of Constitutional Sections.

Negroes attempted to register in greatly increased numbers in 1962. There were approximately 179 Negroes whose forms had been graded when the government photographed in December 1962.

[fol. 1382] A (1)

1962
Sections 157 and 162 (difficult sections)

	White	Negro
Number of Applications	334	179
Number given #157 and 162	11	49
Percentage given #157 & 162	3.3%	27.0%

164 of these 179 Negroes who applied in 1962 were rejected or 86%. This large number of rejects is due in part to the fact that 49 of the 179 Negro applicants received Sections 157 and 162, difficult sections on the jurisdiction of circuit and chancery courts. Only 3 of the 49 Negroes were able to satisfactorily interpret these sections.

By contrast only 11 of 334 white applicants in 1962 were required to interpret Sections 157 or 162 and the occupations and educational levels of these white persons indicate they were probably capable of interpreting these more difficult sections. All 11 passed—One is a chemist, one a secretary, one apparently a recent college graduate, one a teacher, and one a student.

1962

Sections 101 and 148 (easier sections)

	White	Negro
Number of Applications	334	179
Number given	97	18
Percentage given #101 and #148	29.3%	9.1%

[fol. 1383] These sections are as follows:

Section 101—"The seat of government shall be at the City of Jackson, and shall not be removed or relocated without the assent of a majority of electors of the state."

Section 148—"The Supreme Court shall be held twice in each year at the seat of government at such time as the legislature may provide.

(3) The use of Section 30, "There shall be no imprisonment for debt", indicates that no Negroes have been given this Section since 1955 and only 4 Negroes were given this section in 1955. By contrast, white persons have continued to receive Section 30 since 1955. The distribution is as follows:

	White	Negroes
1955	54	4
1956	10	0
1957	3	0
1958	3	0
1959	6	0
1960	0	0
1961	6	0
1962	3	0
Total	84 of 1871 or 4.5%	4 of 501 or 0.8%

[fol. 1384] b. Assistance to white applicants

Assistance to whites is manifested primarily by the existence of a standard answer to question 20 on the application form, concerning the duties and obligations of citi-

zenship. This standard answer consists of three ideas: (1) be a law abiding citizen, (2) vote, (3) pay taxes. The use of the standard answer first becomes prevalent in 1959. During the period from January 1, 1959, to December 31, 1961, all three elements are included in the answer to question 20 on 148 applications out of 876. Of these, three are Negroes. The ideas expressed on these applications are the same, although the wording is not always identical; for example, some applicants write 'abide by the law' rather than, 'be a law abiding citizen'; however, the majority of the standard answer applications contain the phrase "law abiding." (1)

(1) 22 out of 36 in 1961
29 out of 46 in 1960

[fol. 1385] Some of these add an addition element, e.g. 'serve on juries'; some contain an explanatory prefix, e.g., 'the duties and obligations of a citizen are . . .'

	Total Applications	Standard Answer
1959	348	66
1960	257	46
1961	271	36

The standard answer becomes more pronounced in 1962. Out of 334 applications submitted by white citizens, 42 contain the standard answer to question 20, with some variation in phrasiology. The following 25 white applicants gave substantially identical answers to question 20:

Name and Date of Application	Answer
Everett, Helen Marie 1-15-62	Vote, pay taxes and be a law abiding citizen.
Milton Wayne 1-15-62	Pay your taxes, vote in all elections, be a law abiding citizen.
Buford, Eubil W. 1-19-62	Be a lawabiding [sic] citizen, pay all taxes and vote in all elections.

Evans, D. A. Mrs. 1-19-62	Pay your taxes, vote and be law abiding citizen.
Hood, Kenneth Lee 1-25-62	Pay all taxes vote in all elections and be a law abiding citizen.
Bailey, James C. 2-5-62	Vote in all elections pay all taxes and be a law abiding citizen.

[fol. 1386]

Moore, Willie Ray 1-25-62	Pay all taxes. Vote at all elections and be a law abiding citizen.
Bennett, James H. 1-25-62	Pay all taxes vote in all elections and abide by the laws.
Fowler, Cecil 1-29-62	Pay taxes, Vote, and be a law abiding citizen.
Guthrie, Jessie Robert 1-30-62	Pay all taxs [sic] vote in all elections and be a law abiding citizen.
Thorn, Leroy O. 1-30-62	Pay your taxes. Vote in all elections and be a law bodying [sic] citizen.
Mullins, A. Lois 1-31-62	To pay all taxes & register to vote and vote in all elections. Be a law abinding [sic] citizen.
Burchfield, Henry Graver 1-31-62	every citizen shoud vote and pay all taxes and be a law abinding [sic] citize.
Aderson, Floyd Leon 1-31-62	pay your taxes vote in all elections and abide are [sic] law.
Ward, Charles E. 2-1-62	To make a good citizen you should pay all taxes be a law abiding citizen and vote in all elections.

Ross, William T. 2-1-62	Pay all taxes Be alaw [sic] abiding citizen Vote in all elections
Mullin, Percy Lee 2-2-62	Pay all taxes vote in all elections and be a law abinding [sic] citizen.
Rickles, Clinton Lavelle 2-5-62	pay all your tax vote at all elections and be a law abiding citizen.

[fol. 1387]

Peters, Alexandria 2-8-62	Pay all taxes, Vote in all elections and be a law abiding citizen.
Kelly, Eugene Mrs. 2-9-62	pay your poll tax every year vote in all elections and be a law abiding citizen.
Wheat, Gerald O. 2-24-62	By paying taxes, oberying the law voting.
Ivy, William Edward 3-8-62	A person should feel privilege to vote and pay taxes & uphold to the law.
Lockett, Loretta (Mrs. W. H.) 3-16-62	pay all your taxes. Vote in all elections and abide by the law.
Odom, Prentiss Mrs. 4-9-62	abide by the laws of the state pay all taxes vote in all elections
Knight, Annie Bell 6-29-62	pay all taxes vote in all elections be a law abiding citizen.

c. Grading

The following are interpretations of accepted white applicants and rejected Negroes who received the indicated sections of the Mississippi Constitution to interpret:

Accepted	Rejected
Section 101	
Wheat, William Lee White — 2-24-62 Farm Helper "It means that the majority of the people of Mississippi has to vote on it."	Chaners, Andrew Negro — 5-25-62 Rubber work "The headquarters or seat of government of Mississippi or any state shall not be moved or relocated without the assent of ⅔ of the electors of said state."
Boehm, Edward R. White — 3-2-59 Machine Operator "Support of the government of the state can not be much without everybody voting for it."	Cole, Woodrow Negro — 5-7-62 — buchier "The seat of government shall not be remove wouth [sic] The morjoty [sic] of votes."

[fol. 1388]

Accepted	Rejected
Section 157	
Abernathy, Glenda Faye White — 1-24-62 Housewife "Any case brought into the circuit court, if seen fit, shall be transferred to the chancery court."	Robinson, Callie Donie Negro — 1-21-62 Teacher "The causes that are brought into the circuit court, It is the power of the chancery court to transfer it to the chancery court with its jurisdiction."

Smith, Jewel Mansfield
White — 1-26-57
Teacher
"If a case is brought in one court and tried and you are not satisfied, it may be carried to a higher court."

Shelton, Y.*
Negro — 4-19-62
Farm
"all causes that are brought to the circuit court that belong to the chancery court must be carried to the chancery court."

McCorkle, Emma
Negro — 8-8-62
Student
"Causes that are brought into circuit court such as a divorce may be transferred to the chancery court.

Accepted

Rejected

Section 162

Cole, Julian N.
White — 11-5-28
Airplane repair
"as I see it should be handled in circuit court in the first place."

Banks, Helen
Negro — 3-6-62
Maid
"Any causes that is brought in the chancery court if it is a case of trial for the circuit court is can be transferred to the circuit court to be in charged."

Lankford, Hansel H.
White — 1-5-58
Parts and service manager
"The chancery court shall submit to the circuit court as Subscribed by law."

Hurley, Andrew
Negro — 9-12-62
Student
"This means that the circuit court is a higher court than the chancery court and is supreme such the chancery court. When the case is to large for the chancery court then the circuit court will handle it because it is higher than the chancery court.

*Race identification not absolute.

Moore, Charles Presley
White — 3-5-57
Baker
"Take the mater out of the cort and file it in the proper cort."

[fol. 1389]

Accepted

Rejected

Section 226

Bargognoni, Barbara Jean
White — 8-11-58
Beautician
"It means that a convict, who has be convicted or for a crime cannot leave the place they are convicted until they have served their sentence."

Jones, Ora Lee
Negro — 5-3-62
Farming
"There is a law and shall be laws that no convict or convicts shall be hired or leased to persons or corporation. When one has comitted [sic] a crime or crimes they are put the county jail and have their sentence given them and each convict shall work their time out as the law say."

[fol. 1390] Coahoma County #2

Part III

The following negro citizens of Coahoma County have been denied registration on the basis of their interpretations of the Mississippi Constitution. The list is chronological. The identifying number, where it appears, refers to the answer to interrogations 23 and 24 of the State of Mississippi.

Name	Address	Date of Application
Wilson, W. C.	413 McKinley St.	7- 2-55
Cox, Mamie A.	514 Lincoln St.	1-14-56
Francis, Rosia K.	145—8th St.	1-25-56
Walls, Naomi Yvonne	525 Barnes St.	1-30-56
Kilpatrick, Pearlie C.	426 Magnolia Ct.	2- 7-56
Kilpatrick, Pearlie C.	426 Magnolia Ct.	2- 9-56

Name	Address	Date of Application
Kelly, Virgia Mae	629 Barnes Ave.	2-29-56
Kelly, Virgia Mae	629 Barnes Ave.	2-29-56
Davis, Walter	Lyon	8- 3-56
Ware, Bertha	616 Page Ave.	10-31-56
Rhodes, Willis H.	Jonestown	1-17-57
Jefferson, Ella Grader	Farrell	1-28-57
Edward, Lucy P.	429 Prince	1-28-57
Edwards, Lucy P.	429 Prince	1-28-57
Brunson, Jimmie	Riverton	2- 2-57
Brunson, Jimmie	Riverton	2- 2-57
[fol. 1391]		
Jefferson, Ella Grader	Farrell	2- 4-57
Williams, Lena	Clarksdale	1-14-58
Hollingsworth, Millie	1636 6th St.	1-15-58
Hollingsworth, Millie	1636 6th St.	1-15-58
Redmond, Mary Ella	2446 E. 2nd St.	1-21-58
Cavin, Vella	2430 E. 2nd St.	1-21-58
Carnes, Ruth Smith	808 McKinley Ave.	1-25-58
Davis, Charlie	450 McKinley Ave.	1-25-58
Morton, Annie	1731 Sycamore	1-28-58
Williams, Otho	122 State St.	1-28-58
Carnes, Ruth Smith	808 McKinley Ave.	1-25-58
Stansbury, Willie H.	630 Paul Edward St.	1-30-58
Wilson, Julius	103 15th St.	1-30-58
Hintz, Irene	219 Edwards Ally	1-31-58
Morton, Annie May	1731 Sycamore St.	1-31-58
Washington, Eva Elizabeth	918 Page Ave.	1-31-58
Kelly, C.	1630 6th St.	2- 2-58
Taylor, Jessie Lee	404 Garfield	2- 4-58
Adam, Sarah Mae	525 Garfield	8- 6-58
Washington, Emma	South	5-15-59
Morris, Georgia Meria	1648 Sycamore	6-20-59
Brunson, Katie Mae	440 Washington St.	6-25-59
Brunson, Katie Mae	440 Washington	6-26-59
Brunson, Katie Mae	440 Washington	6-30-59
[fol. 1392]		
Harper, Jessie Mae	447 Garfield St.	1-27-60
Gooden, Addie Lee	429 Lincoln	1-29-60
Turner, Edward P.	—	2- 4-60
Turner, Edward Prince	Paul Edward and Seven St.	2-10-60
Petties, Jessie Calvin	Clarksdale	2-12-60
Stewart, Maron	1730 Sycamore St.	10- 3-60
Shaw, Corine	801 Cherokee Ave.	10- 3-60
Dixon, Annie Bell	Sunflower	10- 3-60
Bullock, Sallie	1012 6th St.	10- 3-60
Cooper, Minnie Collins	610 Ashton	10- 5-60
Cooper, Minnie Collins	610 Ashton Ave.	10-31-60
14027		
Johnson, Idessa Mrs.	208 So. Edward	6-14-61
Acox, James	715 Paul Edwards St.	6-23-61
14002		
Flagg, Cora Lee	Stovall Miss.	6-23-61
14029		
14009		
Calvin, Inez Mae Thomas	Riverton	7- 6-61
Shaw, Corine	801 Oakhurst	10- 6-61
Amos, Robert	Sherard	1-25-62
Wiseman, Mary Lee	South	2-14-62
Banks, Helen	419 Adam Ave.	3- 6-62

[fol. 1393]

Name	Address	Date of Application
Love, Sarah Lee Mrs.	917 Page Brick Yard District	3-11-62
Cooper, Muriel Collins	South Clarksdale	3-22-62
14043		
Tigue, Saah	522 Yazoo Ave.	2-26-62
Washington, Eva Elizabeth C.	918 Page Ave.	3-26-62
Brown, Thelma M.	Friars Point	3-28-62
Manery, Ruth Mae	129 Douglas Ave.	3-29-62
Cole, Woodrow	517 Grant St.	4- 4-62
Jackson, Eula Mae	—	4- 4-62
Johnson, Annie W.	Jonestown	4- 4-62
Cole, Woodrow	507 Grant	4- 6-62
Black, Peter Rev.	Jonestown	4-11-62
Hanes, Idell	Jonestown	4-19-62
Shelton, Y.	Beat three	4-19-62
Johnson, Adeline	612 Page St.	4-25-62
Jones, Ora Lee	Jonestown	5- 3-62
Cole, Woodrow	1756 Evan St.	5- 7-62
Wilson, Elejah	444 Adam St.	5-18-62
Brunson, Katie Mae	440 Washington	5-21-62
Robinson, Callie Donie	Lula	5-21-62
Delany, Katie B. Mrs.	417 Harrison	5-23-62
Chaners, Candrew	Roundyard District	5-25-62
Johnson, Adeline Mrs.	612 Page Street	5-30-62
Jones, Tommie Jr.	418 Bolvor Ave.	6-27-62
Byas, Rosie Lee	231 Adam Ave., Clarksdale	7-15-62
14011		

[fol. 1394]

Lofton, William Eddie Jr.	13th 17th St., Clarksdale	7-30-62
Parker, Florence Mrs.	415 Zazoo Ave.	7-31-62
Maiden, Velma Mrs.	—	8- 1-62
Walker, Tiny Mae	912 Florida St., Clarksdale	8- 1-62
Wright, Dorothy Mrs.	352 Jefferson Ave.	8- 1-62
Miles, Isaac Rev.	519 Sunflower	8- 3-62
McMillians, Geneva	747 Lincoln St.	8- 6-62
Randolph, Carrie Lee	617 Garfield	8- 6-62
Benson, Arbertha Mrs.	410 Quincy Ave., Clarksdale	8- 8-62
McCorkle, Emma	211 Adams Ave.	8- 8-62
Johnson, Evelyn Mrs.	1204 Jimison, Clarksdale	8- 9-62
Montgomery, Leather Mrs.	112 Adams Ave.	8- 9-62
Smith, Zular Mrs.	411 Jefferson	8- 9-62
Miller, Ella Mae Mrs.	Garfield St.	8-10-62
Brown, Marlene Mrs.	916 Pase	8-13-62
Houston, Willie Mae	114—13th St., Clarksdale	8-13-62
McBride, Jettie Pearl Mrs.	South—914 Page St.	8-13-62
Wright, Ella Dean	443 Quincy	8-13-62
Jackson, Bula Mae McGee	514 Jefferson Ave.	8-16-62
Paker, Lonnie Mr.	409 Ashton Ave.	8-17-62
14036		

[fol. 1395]

Henry, Ruthie Lee	123 6th St.	8-19-62
Holmes, Odessa	139—18th St., S. Clarksdale	8-21-62
Hunter, Georgia Mrs.	518 Paul Edward	8-21-62
Trotter, Mattie Pearl	608½ Grant St.	9- 5-62
Hurley, Andrew	440 McKinley St., Clarksdale	9-12-62
Green, Alice Louise	807 Paul Edwards, Clarksdale	9-17-62
14013		
Lampkin, Irene	219 18th St., Clarksdale	11- 1-62
Mix, Savannah	137 16th St.	11-16-62

[fol. 1396] DeSoto #3

Part I

A

The following Negro citizens of DeSoto County were not permitted to register or were delayed in their attempts to register to vote. The events described below occurred at the Circuit Clerk's office in DeSoto County.

17005	Since 1955 (6 times) Refused	Has gone at least six times since 1955 and has never been allowed to fill out a form. Was told such things as the books are in Jackson, the clerk is unavailable, the test is difficult for Negroes, that he would have to know the Constitution "by heart", etc.
17000	1958 or 1959 Refused Lady	Went to clerk's office and lady asked him his age. He told her (74 yrs.) and she said that he would have to get an exemption certificate before he could register. He went to Sheriff's office and was told that he didn't need an exemption certificate since he paid only property taxes. He went home.
17007	1959 Accepted then rejected Ross	Went to the courthouse with Rogers Cleveland Williams and Lewis Jones. Was given a form and filled it out completely. Registrar asked her if her husband know that she was trying to register and what did he think of it. She was subsequently allowed to sign the Registration Book. When she went back to vote later in 1959 she was told that he name was not in the book so she has never voted. Reel 3, #1160 shows that she and her son (R. C. Williams) were registered on 5-31-55 but their names are crossed out and "Application Rejected" is written in.

17008	1960 Refused Accepted Davis	Went to register on Saturday and was told to wait until Monday (by the Circuit Clerk). Returned on Monday and waited from 8:00 a.m. until 5:00 p.m., but Davis never showed up. White woman behind the counter said the clerk was out. When he went back the next day he was required to display two poll tax receipts before being allowed to apply.

[fol. 1397]

17001	About Feb. 1961 Refused Lady	We went to register with Rev. H. W. Walker and was told by a female deputy registrar that he would have to return when the registrar was in. Waited an hour and left.
17002	1962 Refused Lady	Went to clerk's office to register to vote. The lady told him he would have to see Mr. Davis.

B

The following Negro citizen was not permitted to obtain a poll tax exemption certificate at the Circuit Clerk's office in DeSoto County.

17002	1962 Refused Poll Tax Exemption	Went to clerk office to get his exemption certificate and the woman deputy there told him that he had to have his last poll tax receipt.

[fol. 1398]

C

The following Negro citizens of DeSoto County was not permitted to register to vote because her interpretations did not satisfy the Registrar. The events described below occurred in the Circuit Clerk's office in DeSoto County.

17004	May, 1962 Rejected Davis-R	Went to register with Lovell Williams, Mrs. S. R. Williams, and Hinds Baptist. Left when Mrs. Williams was told that they would have to come back about 1:00 p.m. Came back at 2:00 p.m. Received a short section to interpret and was later told by Davis, "I'm not supposed to do this, but I'm going to tell you what's wrong with your answer." Mr. Davis then told her his interpretation of the section.
17004	Late May or June, 1962 Rejected	Went to register and was given form by a woman deputy. Received a long, difficult section of the Constitution to interpret. Returned about a week later and was told by same lady, "Well, you didn't pass."

D

The following Negro citizen of DeSoto County was not permitted to register to vote because she did not sign the application form. This occurred at the Circuit Clerk's office in DeSoto County.

17007	April, 1962 Rejected Lady-Dep.	Went to courthouse with her daughter, Lovell, and Gladys P. Muse. Woman deputy gave her a form and she filled it out. The woman later told her that she had "filled it out allright, but you didn't sign your name to it."; she was rejected.

[fol. 1399] Panola #4

Part I

A

The following Negro citizens were refused registration as described. The events took place in Sardis or Batesville in the Circuit Clerk's office.

54030	Spring, 1959 Refused Duke-R Batesville	He went with Willie Kuykendall to the Batesville office where the lady deputy clerk told him that they'd have to wait for Duke to come from Sardis. Duke came in 40-45 minutes later. He waited 30-40 minutes while Kuykendall filled out a form; Duke then told him that he could not register, as he did not have 2 poll tax receipts with him.
54010	Jan. 20, 1962 Refused Woman Sardis	He went to the office in Sardis with J. L. Holt. Duke was not present. Lady clerk told them Duke was in Batesville, and they would have to wait for Duke in order to register or come back another day. They left.
54007	Jan. 20, 1962 Refused Woman Sardis	He went to register with other Negroes in Sardis. Lady in the office said they would have to wait for Mr. Duke in order to register or come back. They left.
54008	1-22-62 Refused Duke-R Sardis	He went to register with four other Negroes. Duke questioned him as to his age, and he told Duke he would be 21 on February 7, 1962 (2 weeks later). Duke told him that he had to be 21 to register and to come back when 21 years old. White persons under similar circumstances were registered without question.

54010	Jan. 22, 1962 Refused Duke-R Sardis	He went with several other Negroes to apply. Duke refused to permit them to register because they had only one poll tax receipt. (White persons were not required to produce such receipts as a prerequisite to registration).

[fol. 1400]

54007	Jan. 22, 1962 Refused Duke-R Sardis	Went to register with four other Negroes. He was not permitted to apply on the ground that he had not paid poll taxes for the two previous years.
54003	Jan. 22, 1962 Not Permitted to Apply Leonard Duke Sardis	Went to registrar's office with four other Negroes, J. L. Holt, Sanford Johnson, Earl Johnson, and S. T. Whiting. Duke refused to permit him to register because he had paid his poll tax only once.

[fol. 1401]

B

The following Negro citizens were delayed in making application for registration. The events occurred at Sardis or Batesville as indicated. In Panola County women deputy clerks handled the registration of white applicants.

54029	Spring, 1959 Rejected Duke-R Batesville	Went to apply with 2 other Negroes. The lady deputy clerk told them that only Duke could register them; he arrived from Sardis 30 to 35 mins. later. They went in one-at-a time. He was 2nd (after Miles) and filled out a form, including copying and interpreting section 212 on which he thinks he erred. He was rejected.

54024	Spring, 1959 Rejected Duke-R Batesville	He, Cox, and Middleton went to the Batesville office and the lady told them they had to wait for Duke, who arrived 15 to 20 mins. later. Duke took them one at a time and filled out a form, including copying and interpreting section 282. He turned in the form when he finished it. He never heard results and thinks that he erred in his interpretation.
54015	Spring, 1959 Rejected Duke-R Batesville	Went to register with two other Negroes, Thomas and Cox. Lady got Duke who arrived after 15-20 minutes. Duke took them one at a time; he was last. He did not complete the form, and Duke closed the office. He asked Duke if he could finish next morning; Duke said he didn't know because Court was going on. Next morning he went back. Duke told him to come back after lunch, which he did. He was required to complete a new application form. The next day he returned because he thought he had failed to sign the form. Duke said "Well you didn't make it".

[fol. 1402]

54001	April, 1959 Rejected Duke-R Batesville	He and 2 other Negroes were told by a lady clerk that she would have to get Duke. He arrived in 25-30 minutes and took them one by one (Cox first). He filled out the form completely in one hour, including copying and interpreting section of Constitution. He gave the form to Duke who said he'd be notified if he passed. He never heard.

54011	May, 1959 Rejected Duke-R Batesville	He and another Negro were told by lady deputy (Mrs. Draper-Meek) to wait for Duke. He arrived 30 to 40 mins. later and took them one-at-a time (Kuykendall first). He completed form but left interpretation of section 266 blank. Duke did not tell him whether he passed or failed and he never heard from his application. While he was filling out form, Duke told him to hurry, dropped books, and harassed him.
54019	May, 1959 Rejected Duke-R Batesville	He went to register with two other Negroes, Miles and Cleveland Williams. The lady in the office said she could not register them and that she would call Duke. Duke arrived about 30-40 minutes later. He permitted them to apply only one at a time; he was last. After he completed the form, Duke told him he would hear from him if he passed. He never heard.
54016	5-9-59 Rejected Duke-R Batesville	Went with two other Negroes, Cleveland Williams and Jesse Rudd. Lady clerk called Duke who was in Sardis. They waited until Duke came. He took them one at a time. Received Section 228 of the Mississippi Constitution to write and interpret. Duke said if you don't hear, you didn't pass, and told him that if he failed this time, there was no need to come back to try again. He never heard results.

[fol. 1403]

54006	August, 1960 Rejected Duke-R Sardis	He went to register with three other Negroes, Mac Rice, Richard Sanders, and Rufus Stokes. Duke told them to wait until he was ready. After twenty minutes Duke called them in one at a time. He did not complete the form.
54018	August 1960 Rejected Duke-R Sardis	Went to Duke's office with three other Negroes, Richard Sanders, Rufus Stokes, and Walter Harris. They were required to wait, and were taken one at a time. He was the third one in. He told Duke he couldn't do much with it and asked permission to take it home and complete it. Duke said it would do no good, "because I have a hundred points of law against you anyway".
54028	1-15-63 Rejected Duke-R Sardis	After paying poll taxes for the second time, he went to Clerk's office to register. He received section 23 to interpret. He completed questions 1-18 on form and asked Mr. Duke if he could take the form home to study it; Duke refused. He was not advisd whether he passed or failed, nor of the publication requirement. He was told to come back in 15 days, which he did. When he returned, Duke told him to come back in 15 more days, which he did. Duke was not there and lady said he must come back to see Duke for results. He subsequently returned and was told he was rejected.

[fol. 1404] C

The following Negro citizen's experience illustrates that use of the constitutional interpretation test deters Negro citizens from applying for and becoming registered voters.

54014	Spring, 1960 Deterred Duke-R Sardis	She went to office to inquire about registration requirements. Duke told her she needed two poll tax receipts and that she must answer about 40 questions on the constitution. She asked him for a copy of the constitution so she could study it. She told Duke it would be impossible to pass a test on something she had not been taught. Duke said, "You are right." He refused to lend her a copy of the constitution. She did not apply for and become a registered voter until 1963 after the suit of *U. S.* v. *Duke* was tried in March 1963.

[fol. 1405] Panola County #4

Part II

Application Forms

1. Number of Forms

The first form is dated 1/7/60. The United Sates filed a suit against Mr. Duke, the Registrar, on October 16, 1961. Prior to that time Duke retained only 15 application forms; all were of white applicants.

Whites	
Accepted	250
Rejected	25
(Not graded at time of photographing in March 1963)	42
Negro	
Accepted	1
Rejected	1

2. Periods Which Forms Cover

(a) January 7, 1960—October 16, 1961 which is the period from the date of the first form to the date of filing of the Complaint against Mr. Duke on October 16, 1961.

Total Number of Forms		Total Number of Persons Registering	
White		White	
Accepted	12		
Rejected	1		196
Insufficient Residence	2		
Total	15	Total	196

[fol. 1406]

(b) October 16, 1961—January 28, 1963.

This covers the time from the date of filing of suit against Mr. Duke until the date the records in his office were first photographed (Pending forms not listed).

White	
Accepted	117
Rejected	10 (4 of whom subsequently registered)
Absentee	1 (Absentee—not completed)
Negro	
Accepted	1

(c) January 28, 1963—March 16, 1963

Period covers from date of first photographing until date of trial against Mr. Duke.

White	
Accepted	129
Rejected	9
Pending	42
Negro	
Rejected	1

3. Analysis of Forms

(a) Selection of Sections of the Constitution

Section	White	Negro
20	57	
22	41	
14	34	
15	30	
28	23	
8	23	
[fol. 1407]		
29	18	1*
11	14	
23	9	1**
116	9	
30	8	
25	8	
31	6	
117	5	
118	5	
265	4	
7	4	
33	3	
207	2	
10	2	
1	1	
24	1	
51	1	
122	1	
123	1	
128	1	
154	1	
240	1	
250	1	

* This Negro, Houston Potts was the first applicant in Panola County to receive Section 29 to interpret (April 23, 1963).

** This Negro, T. S. Whiting was the 2nd person in Panola County to receive this section to interpret, (January 15, 1963).

Four rejected Negro applicants who applied for registration in 1959 for which forms were not retained received the following sections. The incidence of these sections in the retained white application forms is also shown in the following table.

[fol. 1408]

Section	Subject Matter	Negro	White
212	Rate and distribution of interest on certain educational trust funds	1	0
228	Constitutional recognition of legislature's division of alluvial lands into two levee districts	1	0
266	Limitation on holding of state office when holding rights of powers of office of honor or profit under federal or foreign governments	1	0
282	Constitutional recognition of liabilities of state and local governments on recognizances, bonds, obligations and other instruments executed before adoption of Constitution	1	0

The following white registrants testified at the trial of *U.S.* v. *Duke* in March 1963 with respect to the selection of constitution section which they were given to interpret.

Name	Date	Experience
Bettie Mae Mitchell	1/15/62	This registrant testified (Tr. 112) that she was permitted to choose her constitutional section.
Sandra Lee Jackson	1/26/62	This applicant was permitted to choose her constitutional section after she told the deputy clerk that the assigned section was too difficult (Tr. 171).

[fol. 1409]

(b) Assistance to White Applicants

The following white registrants testified at the trial of *U.S.* v. *Duke,* March 1963. All received assistance in completing their application forms. All were registered by Duke or his agents. (Transcript references are to the Transcript of the Testimony at the trial). All were registered by Duke or his agents.

The following is a list of illiterate and semi-literate white witnesses all of whom were registered by Duke and his agents.

Name	Education	Experience
Maudie Darby 7-7-55	3rd grade	Illiterate—could not read or understand Question 20 about the duties of citizenship. She just signed the book. (Tr. Darby, Maudie, 22).

Name	Education	Experience
Audrey Darby 7-7-55	—	Illiterate—could not read Question 20 about the duties of citizenship. He just signed his name, and nothing else. (Tr. Darby, Audrey, 247, 248).
James Myers 1-13-58	10th grade	He could not read Section 30. (There shall be no imprisonment for debt.) He read "That should be no . . ." He could not read and did not know the meaning of "imprisonment" or "debt". The man helped him fill out his form. (Tr. Myers, 190–192.)
Mrs. Jesse Darby 1-30-58	5th grade	At the time she applied she had been ill and "wasn't able to read and write much". Her husband helped her with the form. (Tr. Darby, Mrs. Jesse, 255).
[fol. 1410]		
James Hudson 1-31-58	6th grade	He declined to read due to eye trouble, but didn't have eye trouble when he applied. He did not fill the form out by himself, but worked it out with his wife. "I couldn't read perfect. I ain't no college graduate or nothing like that." (Tr. Hudson, 175, 176, cross exam. 177).
Oscar Barlow 1-21-59	8th grade	He could not read all of Question 20. He filled out only one side of the form and didn't write the duties of a citizen or copy and interpret a section of the Constitution. (Tr. Barlow, 135, cross exam. 136–137; re-direct 138–139).
Mary Etta Peples 1-30-59	6th grade	Read Question 20 except for word "Constitutional". Did not know what it meant. Received form and "I signed what of them I knew, and them I didn't know I left blank, and then I signed a big book." Doesn't recall copying a section of the Constitution. (Tr. Peples, Mary, 227–229.)
William Peples 6-27-59	5th grade	Illiterate—cannot read or write. Ross Darby filled out his form for him. (Tr. Peples, Wm., 78, 79).
Earlie Moore 7-3-59	6th grade	Illiterate—he told the lady he couldn't read or write. His sister-in-law filled out his form for him. Could not read Section 30 or any of the words in it. (Tr. Moore, 286, 287).
[fol. 1411]		
Alvin Nolan 10-22-60	3rd grade	Reads and writes, "some, slow." He read Section 1 as follows: "The power of the Governor of the State of Mississippi shall be . . . same of which are . . . which are . . . and those which are . . . ." He did not write an interpretation of the section he copied. (Tr. Nolan 311, 313).
Curtis Tutor 8-11-61	8th grade	He did not read Section 7. "I can read it to myself but I don't understand what it means . . . There are some words in there I don't know." The lady helped him. She explained what some of the words meant. (Tr. Tutor, 306–308).

Name	Education	Experience
Wayne Stephens 5-18-62	8th grade	Duke gave him Section 30. He did not understand it. Duke told him what to write down for the interpretation. Duke also told him what to write in answer to Question 20 concerning the duties of a citizen. (Tr. Stephens, 89-90, 94). He did not know the meaning of Question 19 (calling for a reasonable interpretation of the section) or Question 20. (Tr. Stephens, cross-exam. 100-101, 103).

C. Grading

In Panola County, an analysis of the application forms of white applicants shows that persons are registered whether or not they write a reasonable interpretation of a section of the Constitution or complete a perfect form.

[fol. 1412]

(2) Errors and Omissions on Application Forms of White Registrants*

Name and Exhibit No.	Date	Questions Omitted or In Error	Remarks
A. F. Daws, Jr.	6-21-61	11	#11 (prior place of residence) blank.
Eva Sullivan	8-1-61	3	registrant was born in 1905 and stated her age to be 53.
Leah M. Park	9-7-61	12, 13	Checked 2 oaths in #12.
L. Y. Henderson	1-8-62	10-Affidavit	This registrant would not have lived in her district for 1 year at the time of the June, 1962 primary election.
H. W. Sutton	1-12-62	10-Affidavit	This registrant would not have lived in his District for 1 year at the time of the June, 1962 primary election.
S. D. Roberson	1-19-62	8	This registrant would have been in Mississippi for only 17 months at the November, 1962 general election.
J. W. Hendrix	1-20-62	11	Prior place of residence blank.
M. L. Blackmon	1-20-62	10	This Applicant would not have lived in her election district for the November, 1962 general election.

* This table refers only to application forms with significant errors or omissions, some of which show the registrant to have been not qualified at the time he applied. Trivial omissions of data which appear elsewhere on the form are not recorded. Thus more than 30 students and housewives left blank the questions relating to their place of employment and the name of their employer. Similarly omitted are forms on which the applicant failed to indicate what he wished to be called if there was another person of the same name in his district. Incomplete answers are not noted if they were responsive.

[fol. 1413]

Name and Exhibit No.	Date	Questions Omitted or in Error	Remarks
I. K. S. Perkins	2-5-62	10 & Affidavit	This registrant would not have been in Mississippi for 2 years at the time of the June, 1962 primary election.
Virginia M. Floyd	4-9-62	11	Prior place of residence blank.
T. L. Curry	4-24-62	12	Checked 2 oaths.
G. L. Whitten	5-11-62	8, 9, 10	Length of residence in Mississippi, blank (8); place of residence, blank (9); date residence began (10) "Tocowa".
Richard B. Adams	5-25-62	10, 11	Length of residence and prior place omitted.
D. F. Clark	8-20-62	11	Question relating to prior place of residence omitted.
W. T. Hudson	8-25-62	12	Incorrect double entry at oath question.
S. N. Massey	8-28-62	11	Prior place of residence left blank.
R. K. Shideler	10-22-62	10 & oath	Applicant's signature line blank; and he would not have been in election district for 1 year before November, 1962 general election.
B. F. Bickerstaff	10-27-62		Applicant's signature line blank.
S. J. Land	10-27-62		Applicant's signature line blank.
H. R. Durham	11-8-62		Applicant's signature line blank.

[fol 1414]

P. T. Grogan	12-18-62		Applicant's signature line blank.
J. B. Sykes	12-20-62		Applicant's signature line blank.
J. S. Meek	12-28-62		Applicant's signature line blank.
P. S. Baker	12-27-62	5	Applicant's signature line blank and question 5 (place of business) blank.
Robert M. Bailey	12-27-62	10	Length of residence in district answered "None."
Mrs. M. L. Brewer	1-2-63	13	#13 (check appropriate oath) answered "No".
N. J. Perkins	1-8-63	Oath	"sprong Port" inserted instead of "Panola" in oath.
M. B. Pardoe	1-9-63	9, 10, 11	This registrant stated that she lived in her present district for 6 months (10), that her latest residence was Largo, Fla. (11), but that she had been in Mississippi for 22 years (9).
C. L. Pitcock	1-12-63	13	20-year-old applicant checked wrong (general) oath.
D. S. Morris	1-14-63	13	Double entry at oath question.
M. E. Brown	1-21-63	13	Double entry at oath question.
O. H. Hawkins	1-21-63	10	Length of residence in district omitted, but different previous place of residence inserted in Question 11.
T. W. Martin	1-22-63	11, 13, 14	#11 (previous place of residence) blank; wrong oath checked in #13.
H. R. Ellis	1-25-63	13	Wrong oath checked in #13.
R. R. Gladney	2-2-63	13	20-year-old applicant checked wrong (general) oath.
C. A. Anderson	2-2-63	13	Double entry in #13.

[fol. 1415]

Name and Exhibit No.	Date	Questions Omitted or in Error	Remarks
N. R. Blasingame	2-5-63	10, Oath	Applicant will not have lived in election district for 1 year at time of August, 1963 election.
Vontice Howell	2-6-63	4, 5	#4 (occupation) blank; #5 (place of business) incomplete.
B. A. Nelson	2-9-63	13	20-year-old applicant checked wrong (general) oath.
P. D. Freeman	2-12-63	13	20-year-old applicant checked wrong (general) oath.
A. J. Gaines	2-16-63	11	#11 (previous place of residence) left blank.
R. P. Cook	2-16-63	13	20-year-old applicant checked wrong (general) oath.
[fol. 1416]			
B. D. Fowler	2-19-63	13	20-year-old applicant checked wrong (general) oath.
N. J. Goforth	2-20-63	13	20-year-old applicant checked wrong (general) oath.

[fol. 1417]

(1) Selected Forms of White Registrants With Unreasonable Interpretations of Constitutional Sections

Section 14. No person shall be deprived of life, liberty, or property except by due process of law.

Name: Richard Earl Adams
Date: May 25, 1962

Interpretation: "Be free of all personal property, and life only to be taken away by law."

Section 15. There shall be neither slavery nor involuntary servitude in this state, otherwise than in the punishment of crime, whereof the party shall have been duly convicted.

Name: Nella Jean Perkins
Date: January 8, 1963

Interpretation: "You Cant enpreson eny one eny linth of time unless they have bin convicted of a crime"

Section 20. No person shall be elected or appointed to office in this state for life or during good behavior, but the term of all officers shall be for some specified period.

Name: Mrs. Eva Sullivan*

Date: August 1, 1961

Interpretation: "An a honest christian woman. Never broken any laws, uphold all laws of U.S. states of America. should be elected for 2 yr. or for term fixed by law."

[fol. 1418]

Name: Gordon L. Whitten*
Date: May 11, 1962

Interpretation: "You can proble stay for one or two times than they would let some one else run or they would have the right to run. timer is user for 4 years."

Name: Norma Jean King
Date: July 13, 1962

Interpretation: "This section means that no one person who should ever be elected in this state will ever have to serve more than the specified amount of years in office, and also that said person should maintain good behavior for that amount of office years. Also should have good behavior before try's to be elected."

Name: Robert M. Bailey
Date: December 27, 1962

Interpretation: "A person can be elected to office if he or she have a good reported. If there don't have a good report there should not be in office. There can serve a period of 4 year."

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*This registrant answered Question 20 ("Write in the space below a statement setting forth your understanding of the duties and obligations of citizenship under a constitutional form of government.") as follows: "up hold all laws of a good ceetre(?) of U.S. states."

Name: Ruth L. Shideler
Date: February 12, 1963

Interpretation: "Every office has a term which cannot be changed by the elected or appointed. He has to be without blemish of jail or any prison record."

Section 22. No person's life or liberty shall be twice placed in jeopardy for the same offense; but there must be an actual acquittal or conviction on the merits to bar another prosecution.

Name: Martha Blackmon
Date: January 20, 1962

Interpretation: "No person can be accused and prosecuted of the same crime twice unless he has been forgiven and set free from the first, or either been convicted."

[fol. 1419]

Name: Melvin T. Williams
Date: October 8, 1962

Interpretation: "It means that any one person can not be tried for the same crime twice unless he is actual proven not guilty. But if the jury is hung up or can not reach a majority in this, there can be another trial on this man."

Section 28. Cruel or unusual punishment shall not be inflicted, nor excessive fines be imposed.

Name: Mrs. Patricia F. Magee
Date: May 12, 1962

Interpretation: "I believe that the meaning of the statement of Section 28 is: When any officer of the law is issueing punishment or fines to another that he should be absolutely fair in his judgment and no personal feelings should be considered. Punishment should not be issued unless the officer of the law has enough evidence to uphold his findings."

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*This registrant answered Question 20: "to be fade to talk and what to do and understanding what is going on in the state."

Name: Mrs. Robert Joyner
Date: February 7, 1963

Interpretation: "Dont — (illegible) Punishment nor undue punish"

Section 265. No person who denies the existence of a Supreme Being shall hold any office in this state.

Name: James W. Brown
Date: January 20, 1962

Interpretation: "I believe that No Person who does Not believe in God needs any office in the United States because he may teach people or more people the same thing or try to."

[fol. 1420] Panola County #4

Part III

The persons named below are Negroes who have been deprived of the right to vote on the dates indicated. The numbers are those which identify persons by name and address in response to Interrogatories number 23 and 24. Their experiences in attempting to register are set out by number in Part I, above.

The applications for registration of these Negro citizens of Panola County were rejected because of either the interpretation test or the perfect form requirement, or both. Their forms were not retained.

54001	Nolan S. Cox	May, 1959
54023	Edward Thomas	Spring, 1959
54016	Robert J. Miles	May 9, 1959
54029	Cleveland J. Williams	May, 1959
54019	Jesse M. Rudd	May, 1959

[fol. 1421] Quitman County #5

Part 1

A

The following Negro citizen was rejected because he did not interpret the Constitution to the satisfaction of the registrar. This event occurred at the Circuit Clerk's office in Quitman County.

60004	2-63 Rejected Registrar	Went to office of the Registrar, filled out form and left; his name was published in paper; went back 2 weeks later and clerk told him he'd misinterpreted the Constitution.

[fol. 1422] Quitman County #5

Part 1

B

The following Negro citizen was not permitted to remain registered to vote because of the good moral character test. This event occurred in Quitman County.

60005	6-5-62 Challenged on good moral character Registrar Sheriff	Went to office of Registrar, but was told to return in 15 days; returned with son and daughter; clerk said he passed and gave him certificate; met by Sheriff outside courthouse; Sheriff took their names and addresses; received statement that registration incomplete, that Sheriff had challenged him. He was not allowed to vote at next election.

[fol. 1423] Tallahatchie Co. #6

Part 1

A

The following Negro citizens of Tallahatchie County were not permitted to pay their poll taxes. In Tallahatchie County, the deputy sheriffs accepted poll tax payments from write persons, but Negroes were required to see the Sheriff. The events described below occurred at the Sheriff's office in Tallahatchie County.

68029	About January, 1956 Refused Burnett-Deputy	Went with Rev. Terry and others to pay poll tax after reading in the paper that everyone should pay poll tax; the Deputy said that it did not mean colored people.
68023	January, 1956 Refused Trout-Deputy	Went with Everlean Bearden to pay poll tax; they asked Deputy Trout if they could pay their poll tax, and he said no.
68023	January, 1957 Refused Man-Deputy	After paying property tax, she asked to pay poll tax; she was refused.
68034	In December of either 1957 or 1958 Refused Man-Deputy	He paid his property tax, but the clerk would not allow him to pay his poll tax.
68023	About January, 1958 Refused Man-Deputy	After paying property tax, she asked to pay her poll tax; she was refused.

[fol. 1424]

68014	December, 1958 Refused Man-Deputy	When he asked to pay his poll tax, the male deputy refused; a female deputy was also present.
68023	About January, 1959 Refused Man-Deputy	After paying property tax, she asked to pay her poll tax; she was refused.
68014	February, 1959 Refused Lady	He was told by a lady clerk that he did not have to pay a poll tax, and was not permitted to do so.
68039	January, 1960 Refused Woman-Deputy	After paying property tax, she asked to pay poll tax; was sent to the Registrar's office then back to the Sheriff's office, then refused because she had not paid poll tax in the past.
68034	Jan. 4, 1960 Refused Turman-Deputy	When he asked Mr. Turman if he could pay his poll tax, Mr. Turman told him to see Lawyer Blount.
68004	Spring, 1960 Refused Trout-Deputy	She and Mrs. Birdie Kegler went to Sheriff's office to pay poll tax; told by Deputy Trout that they would have to see a man who was not there.
68023	December, 1960 or January, 1961 Refused Clerk	She asked if she could pay her poll tax and was told she could not.

[fol. 1425]

68014	January, 1961 Refused Man-Deupty	He was told by the Deputy Sheriff to see the Sheriff.
68039	January, 1961 Refused Woman-Deputy	After paying property tax, she asked to pay her poll tax; she was told to see the Sheriff.
68004	1-16-61 Refused Man-Deupty	She paid property tax, then asked to pay poll tax; the deputy said "No" twice, turned to make change for her and said "No" again; she left.
68061	May, 1961 Deterred Unknown	Wanted to pay poll tax and register but was afraid to because he had tried and had been refused several times in the past.
68040	December 15, 1961 Refused Deputy-Turman	He was told he would have to see the Sheriff before he could pay his poll tax; he could not find the Sheriff.
68014	December 4, 1961 Refused Lady	He asked the lady employee in the Sheriff's office about paying poll tax; she told him he would have to see Sheriff Dogan.
68040	January, 1962 Refused Turman-Deputy	Deputy Turman referred him to the Sheriff when he attempted to pay his wife's poll tax.
26079	January, 1962 Refused Turman-Dep. Sh.	Went to Sheriff's office to pay his property tax; asked clerk if he could pay his poll tax; clerk told him he would have to see the Sheriff. Sheriff wasn't in, and he left.

[fol. 1426]

68011	January 1962 Refused Man-Deputy	He was told when he asked to pay poll tax that if he had not been paying them during the last two years, he would have to see the Sheriff; the Sheriff was not in Sumner then.
68026	January, 1962 Refused Man-Deputy	She went to pay her poll tax with her husband; the male deputy told them that she would have to see Sheriff Dogan and that he was not in.
68039	January 15, 1962 Refused Lady & Man-Deputies	She paid her property tax to one of two female deputies; she asked to pay poll tax; the lady told her she would have to see the Sheriff; the male deputy advised her not to try.
68003	January 17, 1962 Refused Turman-Deputy & Woman	Paid property tax to lady deputy. Asked to pay poll tax; referred by her to Deputy Turman, who asked his precinct; Turman then said he would have to see the Sheriff; the Sheriff was out, so he left.
68028	January 23, 1962 Refused Dogan-Sheriff	He wrote a letter to Sheriff Dogan enclosing two money orders for his 1961 and 1962 poll taxes and requesting receipts; the letter set forth his background; by a letter, he was refused because his precinct was not known by Sheriff Dogan.
68040	January 25, 1962 Refused Turman-Deputy	He was told by Deputy Turman he would have to see the Sheriff about paying his poll tax; Mr. Blaylock and Miss Douglas, both white, were there; he could not find the Sheriff before the deadline.

68025	January 27, 1962 Refused Dogan-Sheriff	When she tried to pay poll tax, Sheriff Dogan told her she would have to come back another day because he didn't know her, and he only took poll tax from persons he knew.

[fol. 1427]

68026	2-1-62 Refused Turman-Deputy	After paying his property tax, he asked to pay his poll tax; he was told he had to see the Sheriff who was not around the Courthouse.
68023	12-7-62 Refused Lady-Clerk	After paying the property tax, she asked the lady clerk if she could pay her poll tax; the lady said she would have to see Deputy Turman.
68019	January, 1963 Refused Lady	After paying his property tax, he asked if he could pay his poll tax. The lady clerk told him to see the Sheriff.
68039	January, 1963 Refused Lady	Asked if she could pay poll tax; lady said she would have to see the Sheriff.

[fol. 1428] B

The following Negro citizens of Tallahatchie County were not permitted to register to vote. The events described below occurred at the Circuit Clerk's office in Tallahatchie County.

68001	Spring, 1960 Refused Harris-R	Went to registration office to apply; told by the Registrar that he could not apply as he, the Registrar, was new on the job and not familiar with the books; told to come back some other time.

68014	About February 1, 1961 Refused Harris-R	Harris told him that the registration books were in Jackson; Harris told him he would let him know when the books got back; he gave him his address and left. He did not hear anything before his next attempt.
68014	Last of February, 1961 Refused Harris-R	Shortly after his first attempt, he returned with Mrs. Kegler and both were told by Mr. Harris that the registration books were still in Jackson.
68023	February, 1961 Refused Harris-R	She went with Mr. Drake and they were told the registration books were still in Jackson.
68017	Early 1962 Harris-R Refused	Went with V. O. Johnson to registrar's office; Harris asked them their ages and proof of age. He had proof, but Johnson had to get his birth certificate; upon returning to the office, they were asked their precinct; When he said "Here in Charleston," he was told that was not right and that he had not been to school enough; They were not allowed to fill out a form.

[fol. 1429]

68014	1-8-62 Refused Harris-R	On this date he first got his Poll Tax Exemption Certificate; he then asked Harris if he could register; he was told the books had not been returned from Oxford, and was not allowed to apply; a white lady about fifty was present.

68021	Jan. 28 or 29, 1962 Refused Harris-R	He went with Coy Hamilton to register; they were required to furnish proof of age which he had to go home and get; upon returning they were asked their precinct; Hamilton answered, and then Harris told them they would have to go back to school; they were not permitted to fill out a form.
68018	August 16, 1962 Refused Harris-R	She was told by Mr. Harris that she could not register until he had run her name in the paper for two weeks.
68035	August, 1962 Refused Harris-R	When he attempted to register, Mr. Harris told him that he would have to come back after his name was run in the paper for two weeks; an unidentified white man in Harris's office witnessed this.

[fol. 1430] C

The following Negro citizen of Tallahatchie County illustrates the deterrent effects of the publication law. This event occurred in Tallahatchie County.

68018	January, 1963 Delayed Deferred Accepted Harris-R	Went to the office of the Registrar in August, 1962; Mr. Harris did not permit her to fill out a form at that time, and said he would publish her name in the paper for 2 weeks; in October, shortly after the Oxford riot, a figure in woman's clothes was hung in effigy in front of her home; this she feels was due, in part, to her attempt to register; she returned to the Registrar's office in January, 1963, where she was permitted to fill out a form and interpret section 1 of the Constitution; when she had completed the form, Harris permitted her to sign the registration book.

[fol. 1431] Tate County #7

Part I

A

The following Negro citizen of Tate County was deterred from registering to vote. This event occurred in Tate County.

69001	1961 Deterred Sheriff	Was told by Sheriff that no NAACP activity would be tolerated in County. Sheriff also told him that Negroes were never going to vote in County.

[fol. 1432] Tunica #8

Part II

Application Forms

1 & 2. Number and Period of Application Forms

The first application form in Tunica County is dated April 9, 1955. The latest form is dated March 28, 1963. There is a total of 497 application forms for this period. The racial breakdown on these forms is as follows:

	Accepted	Rejected	Pending
White	420	12	27
Negro	28	4	2
Unknown	4	0	0

3. Analysis of Forms

a. Selection of Constitutional Sections

The following table reflects the incidence by race of the constitutional sections assigned:

Section	White	Negro	Unknown
1	27	0	0
12	2	1	0
15	1	0	0
23	7	8	0
30	1	0	0
106	4	0	0
113	20	0	0
115	1	0	0
116	389	25	4
252	1	0	0
—	6	0	0

A substantial majority of whites and Negroes received Section 116 to interpret. This section reads as follows:

> The chief executive power of this state shall be vested in a governor, who shall hold his office for four years, and who shall be ineligible as his immediate successor in office.

[fol. 1433]

b. Assistance to Applicants

(1) Question 19—*Constitutional Interpretation*

Sixty-seven whites and three Negroes wrote interpretations of Section 116 identical or substantially similar to the following:

> The head of the state (chief executive) is the governor who shall hold office for four years and can't immediately succeed himself.

These answers were all between April 28, 1955, and January 29, 1957. Fourteen (14) whites and no Negroes wrote interpretation of Section 116 identical or substantially similar to the following:

> The governor shall hold office for four years and cannot immediately succeed himself.

These answers were all writen between January 30, 1958, and February 25, 1959.

(2) Question 20—*Duties and Obligations of Citizenship*

Sixty-seven white applicants and two Negroes wrote statements of duties and obligations identical or substantially similar to the following:

(A good citizen should) obey all laws and vote in all elections.

[fol. 1434] (3) Summary

Table indicating total assistance as shown by standard answers:

	Total Accepted Forms	Question 19	Question 20
White	420	81	67
Negro	28	3	2
Unknown	4	0	0

c. Grading

Four Negroes and twelve white persons have been rejected for registration in Tunica County. All had very poor forms.

The first rejected applicant was Elvin Hemphill, a Negro, on January 6, 1959. All four rejected Negroes applied between 1959 and May, 1962. All rejected whites applied after November 1, 1962.

[fol. 1435] Carroll County #9

Part I

A

The following incidents occurred in Carroll County. They are indicative of the difficulties faced by Negro citizens of Carroll County in their attempts to pay poll taxes and register to vote. These events occurred at the places noted.

8017	About 1956 Refused Mrs. Lilly MacDougal	Went to Sheriff's office in Vaiden about 1956 to pay poll tax, the clerk there asked him questions about who sent him in and would not let him pay poll tax.

8001	1959 Refused Turbeville-R	He went to the Circuit Clerk's office to register. He was told by Circuit Clerk that he had no registration forms when he tried to register.
8001	6/62 Deterred Coleman Stewart	He was beaten June 1962 by two white men, James Coleman and Everett Stewart, who told him that Negroes were not going to register in Carroll County.

[fol. 1436]

Leflore #11

Part I

A

The following Negro citizens of Leflore County were not permitted to register to vote or were delayed in applying to register to vote. The events described below occurred at the Circuit Clerk's Office in Leflore County.

42062	3-59 Refused Lamb-R	He and Mr. Jennings Henderson went up to register sometime in March 1959. The Clerk on duty told them she had a letter from the Governor of Mississippi asking her not to register any more people for a period of time. She read them part of this letter. Then they left.
42033	3-59 Refused Lamb-R	He went up to register with Rev. Wade. Mrs. Lamb told him about a letter from Governor Coleman, and that he couldn't register now. She said she would send him a form when they came.

42018	1959 Refused Lamb-R	Went to clerk's office. Told Mrs. Lamb he wanted to register to vote. She said she was very busy, that they were having court, and told him to come back. She took his name, age, and address. 30 minutes after he arrived home, two white men who live near him, T. C. Britt and a man named Adrian, came to see him, and asked him why he went to courthouse. He told them to register. Britt advised him not to go back to courthouse to register.

[fol. 1437]

42018	1959 Refused Lamb-R	Second attempt. Went with brother. Mrs. Lamb told him she was still too busy to register him. Several days later the same white men who approached him before, accompanied by his brother's employer, Tommy Gardner, stopped to see them at his brother's house. Britt said "If I were you, I wouldn't go down there and disturb anything." He has not been back to apply.
42017	1959 Refused Lamb-R	Went up to register with brother Jodie. Mrs. Lamb told them she was quite busy and didn't have time to fool with it. Two days later three white men, T. C. Britt, S. T. Gardner, his employer, and a man named Adrian, stopped by his house. Adrian told him he violated "them" by going up. Britt said they weren't going to have any associating together. He hasn't been up to register since this incident.

42043	Approx. 1960-1961 Refused Lamb-R	She tried to vote in an election. The election officials referred her to Mrs. Lamb, when they couldn't find her name listed. When she asked her, Mrs. Lamb said, "Today isn't registration day. Today is election day. You go and come back."
42046	Spring 1960 Refused	He told the clerk in the office he wanted to register to vote. She told him they weren't registering colored folks. He left and has never been back since.

[fol. 1438]

42067	3-4-63 Delayed Lamb-R	A large group of Negroes was already in line when she and four others come to register on March 4, 1963. Mrs. Lamb was accepting two applicants at a time. She was assigned section 135 to interpret.
42031	3-4-63 Delayed Registrar	She attempted to register again on March 4, 1963. There was a long line of persons waiting to register. Only two persons were allowed in at a time. This time she was assigned section 173. This application was rejected.

42071	3-7-63 Delayed Accepted Lamb-R	Went up to apply to register afternoon of March 6, 1963. Stood in line with about 20 other Negroes till 4:30, when Deputy Clerk, Mrs. Chandler said no more applications could be handled that day. Returned following day. Stood in line again. Got form and had to interpret Section 173. Asked Mrs. Lamb if question pertaining to prior address meant prior Greenwood or non-Greenwood address. Mrs. Lamb told him that she could not assist him. She told him to return in 30 days to see if he passed.
42013	3-7-63 Delayed Accepted Lamb-R	Went up to apply to register with her husband afternoon of March 6, 1963. Stood in line with about 20 other Negroes till 4:30 P. M. when Deputy Clerk, Mrs. Chandler, said no more applications would be handled that day. Returned following day. Stood in line again. Received form and section 27 to interpret.

[fol. 1439]

42003	5-21-63 Refused Deputy Registrar	Deputy Registrar told Emma Belle and five others that they would have to wait till Mrs. Lamb came in, to get waited on. She then let a white person fill out the form.

[fol. 1440] Part I

B

The following Negro citizens of Leflore County were not permitted to register to vote for the reasons noted below. The events described below occurred at the Circuit Clerk's office in Leflore County.

42062	1-11-56 Rejected	He applied to register the first time on January 11, 1956. He said he could not swear to the truth of the application because of religious convictions. The clerk told him that there was no need to fill the form out if he could not swear to it, and took the application form from him. The form is marked "Unable to swear because of religious convictions" and Q. 19 & Q. 20 are blank. In Mississippi you may swear or affirm when signing the oath.
42016	6-29-60 Rejected Lamb-R	Went to clerk's office. Lady who was there said he'd have to see Mrs. Lamb. Mrs. Lamb came later, gave him form and Section One of the Constitution. She checked it when he finished. She said his answer on the Constitution question was not correct, that he had given it good thought but she couldn't pass him because he hadn't answered it according to law.
42021	1962 Rejected Man.	Went up to register with two other Negroes, Mrs. Ruby Harris and Mrs. Addie Mae McGill. She was given Section 20 to interpret. When she was finished a white man came in, looked at her form, said it was pretty good, but that the last sentence was not correct and that she had therefore failed.

[fol. 1441] Leflore County #11

Part II

Application Forms

1. Number of Application Forms

The first application is dated March 28, 1955. Forms have been retained since that time and are numbered consecutively to March 15, 1963, the date of the last application photographed under order of this court. There are 2,086 forms during this period which are numbered consecutively from 1-2086. The breakdown follows.

	Accepted	Rejected
White	1597	284
Negro	17	188

2. Period Which Forms Cover

a. March 28, 1955 - September 19, 1960

This period covers the first 1227 forms, from the date of the first form to the date of first photographing of the registration records of Leflore County by the Department of Justice. The breakdown of forms is

	Accepted	Rejected
White	1193	14
Negro	11	9

[fol. 1442]

b. March 28, 1960 - August 8, 1961

On August 8, 1961 the Leflore County Election Commissioners purged 178 names from the registration books. The names which were stricken included 173 white persons and 5 Negroes. The stated basis for the purge was that none of the 178 persons had complied with Section 244 of the Mississippi Constitution. All had completed application

forms and were registered by Mrs. Lamb. The total number of forms for this period are

	Before Purge	After Purge
White Accepted	1338	1165
White Rejected	22	195
Negro Accepted	13	8
Negro Rejected	14	19

c. March 28, 1960 - March 15, 1963

March 15 was the last day of the record photographing of the Leflore County records. Cumulative totals:

	Accepted	Rejected
White	1597	284
Negro	17	188

3. Analysis of Forms

a. Selection of sections of the Constitution

1. March 28, 1955 - September 19, 1960

From March 28, 1955 to September 19, 1960, of 1207 white persons who completed application forms during this [fol. 1443] period, 405, or 34 per cent received one of ten sections with three lines or less. These are selected sections which were more frequently used than other sections with three lines or less. None of these sections were given to the fourteen Negroes who completed an application form during this period. Six other Negroes who applied during this period did not complete the form, and no section number is listed on their forms.

Frequently used Sections of 3 lines or less
March 28, 1955 to September 19, 1960

Section	White	Negro	No. of lines
28	41	0	1½
30	112	0	1
67	31	0	1½
92	17	0	1½
93	19	0	1½
101	32	0	2½
123	33	0	1
148	75	0	2
153	23	0	3
207	22	0	1½

The fourteen Negroes who completed the application forms were given ten different sections. These sections were given to six per cent of the white applicants. And of these applicants, the greater number (46 out of 67) were given the Section 1, which two Negroes had received.

[fol. 1444] b. March 28, 1960 - August 8, 1961

On August 8, 1961 the Leflore County Election Commissioners purged 178 names from the registration books. The names which were stricken included 173 white persons and 5 Negroes. The stated basis for the purge was that none of the 178 persons had complied with Section 244 of the Mississippi Constitution. All had completed application forms and were registered by Mrs. Lamb. The total number of forms for this period are

	Before Purge	After Purge
White Accepted	1338	1165
White Rejected	22	195
Negro Accepted	13	8
Negro Rejected	14	19

c. March 28, 1960 - March 15, 1963

March 15 was the last day of the record photographing of the Leflore County records. Cumulative totals:

	Accepted	Rejected
White	1597	284
Negro	17	188

3. Analysis of Forms

a. Selection of sections of the Constitution

1. March 28, 1955 - September 19, 1960

From March 28, 1955 to September 19, 1960, of 1207 white persons who completed application forms during this [fol. 1445] Ten Sections Given to 14 Negro Applicants—

Comparison With Whites Receiving Same Section March 28, 1955 to September 19, 1960.

Ten Sections Given to 14 Negro Applicants—Comparison With Whites Receiving Same Section March 28, 1955 to September 19, 1960

Section	No. of Lines	Negro Applicants	White Applicants
133	9	2	0
168	6½	2	1
125	6	1	0
221	6	1	0
249	6	1	3
102	5½	2	3
173	4½	1	5
1	4	2	46
166	3½	1	5
129	3½	1	4

Ten Sections Frequently Given to White Persons—1959

In one year, 1959, the ten sections of 3 lines or less previously referred to were given to 224 of the 458 white persons who applied to register. Section 30 was given to 63 of them and Section 148 to 36.

Section	No. of lines	Times Given
30	1	63
148	2	36
67	1½	23
28	1½	19
123	1	17
101	2½	13
93	1½	11
92	1½	10
207	1½	10
153	3	10

[fol. 1446] From March 28, 1955 to September 19, 1960, the date of the first photographing Section 30 was given to 112 white applicants. Since that day, it has been used only once. It has never been given to a Negro. Section 148, which had been given to 75 white applicants prior to the photographing in September 1960 has been used only 4 times since. It has never been given to a Negro.

[fol. 1447]

b. Assistance to Accepted White Applicants

Assistance to white applicants takes the form of identical or substantially identical answers to Question 19 (interpretation) and Question 20 (duties and obligations). The period during which standard answers appear is from March 28, 1955, the date of the first form, to August 8, 1961, the date the Election Commissioners struck 178 names from the registration books.

(1) Question 20—Duties and Obligations

A. The following are answers by four white applicants. The first two were written by a husband and wife who applied on the same day; the last two were submitted one month later on two consecutive days.

No.	Date of Application	Name
913	6–5–59	James H. Carpenter
914	6–5–59	Mrs. James H. Carpenter

913: "A cityzen should always uphold the constitution and abide up all laws both state and Federall."

914: "A citizen should always uphold the constitution and abide by all laws both state & Federal."

991	7–2–59	Mrs. Charles Wier
1004	7–3–59	Mrs. Charlotte Duggins Daves

991: "A citizen should always uphld the constitution and abide by all law both State & Federal."

1004: "A citizen should always uphold the constitution and abide by the laws both State & Federal."

[fol. 1448]

B. The following answers were submitted on the same day by a husband and wife on consecutively numbered forms.

No.	Date of Application	Name
No.	Date of Application	Name
261	8–3–56	Mrs. Hazel C. Henderson
262	8–3–56	Walter R. Henderson

261: "A pearson shold be able to vote due to age and of citizenship of their town and country. By all means they should be a christian."

262: "A person shold be abe to vote and and of age and a citizen of town and country. By all means should Be a crustan."

C. Each of the following pairs of answers was submitted on successively numbered forms on the same day by two applicants with the same last name. In every case except "(d)" they had the same address.

	No.	Date of Application	Name
(a)	327	1-31-57	Herbert Carr
	328	1-31-57	Muriel Carr (Mrs. Herbert)

327: "To abide by all rules, regulations, laws, provided by the constitution."

328: "To abide by all laws, & regulations provided by the Constitution."

(b)	393	10-21-57	Charles R. Blackburn
	392	10-21-57	Jeanne G. Blackburn (Mrs. Charles R.)

393: "You should take an active part in federal, state, county and local government affairs. Exercise your rights to vote and do so to improve your government."

392: "A citizen should take an active part in his city, country, state, and federal government."

[fol. 1449]

(c)	485	2-22-58	Mrs. J. E. Oswalt (Mrs. Martha L.)
	484	2-22-58	J. E. Oswalt, Jr.

485: "to up hold the laws of the land."

484: "Up-hold all laws."

(d)	526	6-21-58	William G. Malone
	527	6-21-58	Eula Irene Malone (Mrs. Glen)

526: "To be Honest. Pay Poll Tax. Do Not Lie. Be a good Citizen. Obey the Law."

527: "Pay poll tax. Obey the law. Pay your debts. Be a good citizen Be honest."

(e)	798	3-21-59	Annette Jackson
	799	3-21-59	Jeannette Jackson

798: "I should abide by the laws of my County, & State. I should Particiate in Community affairs such as Church activities, Political elections & ect."

799: "As a good Citizen who abide by all laws I shall participates in Community affairs such as Church Activities and politicl elections."

(f)	835	4-4-59	Dora L. Morris (Mrs. Harvey)
	836	4-4-59	Harvey Morris, Jr.

835: "I fill that it is my duty to obey all laws & to vote in all elections."

836: "I feel that it is My duty to obey all lows and to pay all taxes."

[fol. 1450]

D. The following answers were submitted by two white applicants on the same day on successively numbered forms.

No.	Date of Application	Name
1361	3-25-61	Jerry L. Moss
1362	3-25-61	Raymond L. Everett

1361: "As a citizen of the United States a person should uphold the law and take part in all forms of government activities."

1362: "As a citizen of the United States a person should uphold the law and take part in all forms of government activities."

E. The following answers were submitted by two white applicants on consecutive days.

No.	Date of Application	Name
31	4-21-55	Helen F. Cain
37	4-22-55	Denson A. Moss

31: "I believe that it is a privilege for me to register and be able to vote on person or persons whom I think are able to fill our office. I think every citizen should obey all the laws."

37: "I think that it is a privelege for me to register and be able to vote for the person whom I think is able to fill an office. I think every citizen should obey the law."

F. The following answers were submitted by two white applicants on consecutive days.

No.	Date of Application	Name
648	1-27-59	Virgil K. Purnell
656	1-28-59	Mary L. Rozier (Mrs. Robert E.)

648: "Citizens should be law abbiding and helpful to the Community in which the live."

656: "Citizens should obey all laws and helpful to the Community in which he lives."

[fol. 1451]

G. The following answers were submitted by two white applicants one week apart.

No.	Date of Application	Name
952	6-26-59	Shirley Lynn Gass
1033	7-3-59	Charles Lee Turner

952: "A good citizen is one who pays his or her taxes and votes in all elections and one who respects the laws of the county and state."

1033: "A good citizen is one who pays his or her taxes and votes in an election and one who respects the laws of the county and state."

H. The following are answers by two white applicants.

No.	Date of Application	Name
893	5-30-59	John Hugh Stanton
926	6-12-59	Timothy Wilburn Lott, Jr.

893: "It is the duties of each citizen to know, understand, support the laws of a constitutional government & defend it from outside forces."

926: "It is the duties of each citizen to know, understand, & support the laws of a constitutional government & defend it from outside forces."

I. The following are answers by two white applicants.

No.	Date of Application	Name
894	5-30-59	William E. Boyle
977	6-29-59	Margaret Childress Goss

894: "It is the duty and obligation of each citizen to vote in all elections."

977: "It is the duty and obligation of each citizen to vote in all elections."

[fol. 1452]

J. The following are answers by two white applicants.

No.	Date of Application	Name
906	6-2-59	Mrs. John Nelms
1020	7-3-59	Eugene Morris

906: "A good citizen should allways abide by the laws of the state."

1020: "A good citizen should allways abide by the law of the state."

K. The following are answers by two white applicants.

No.	Date of Application	Name
931	6-16-59	Mary Elizabeth Terry (Mrs. Paul S.)
949	6-25-59	Evelyn L. Scott

931: "It is my understanding that as duties and obligations of citizenship under a constitutional form of government that every citizen should exercise their right to vote and support the meaning of the constitution."

949: "It is my understanding that as duties and obligations of citizenship under a constitutional form of government that every citizen should exercise their right to vote and support the meaning of the constitution."

L. The following answers, by two white applicants, were submitted three days apart.

No.	Date of Application	Name
948	6-24-59	Joseph Johnson
956	6-27-59	Carroll Kyle

948: "I believe a good citizen should obey the laws and follow all rules that the government requires."

956: "I believe a good citizen should obey the laws and follow all rules that the government requires."

[fol. 1453]

M. The following answers were submitted by three white applicants within a one-month period.

No.	Date of Application	Name
919	6-8-59	Maurice Milton Kelly
944	6-23-59	Ann Elizabeth Dillard
1001	7-2-59	Jeanine Bell Stewart (Mrs. T. F.)

919: "Honest, Loyal, & obedince to her country, and pay his taxes. Should use his best judgement in voting for a person running for public office."

944: "Honest, loyal, and obedience to his country and payment of taxes. Own judgement in voting for a person running for public office."

1001: "Honesty, Loyality & obedince to their country, pay your taxes, Should be his best judgement in voting for the person running for office."

N. The following answers were submitted by two white applicants two days apart:

No.	Date of Application	Name
834	4-4-59	Arthur B. Potwin
838	4-6-59	Walter K. James, Jr.

834: "1) to be willing to defend one country. 2) to vote in all elections. 3) to be an upright honest and "conforming" citizen. 4) to abide by the laws and written codes of my country. 5) to never betray my country by treason or any facsimile thereof."

838: "1. To be willing to defend one's country. 2. To vote in all elections. 3. To be an hones, upright, and "conforming" citizen. 4. Tc abide by the laws and written codes of my country. 5. To never betray my country."

[fol. 1454]

O. The following answers were written by two white applicants on the same day.

No.	Date of Application	Name
130	7-8-55	Margaret T. Steele (Mrs. Ralph)
136	7-8-55	Richard L. Noaks

130: "Obey all laws, support the Constitution Vote, pay taxes."

136: "Obey all laws support the constitution, vote, pay taxes."

P. The following are answers by three white applicants.

No.	Date of Application	Name
286	10-13-56	John Frederick Peden
401	11-8-57	Sarah Jane H. Skinner (Mrs. James G.)
409	12-18-57	George W. Bankston

286: "To obey all laws set forth in the constitution."

401: "To obey all laws set forth in the Constitution."

409: "To obey all laws set forth in the Constitution."

Q. The following are answers by two white applicants.

No.	Date of Application	Name
483	2-17-58	Roy Preson Kelly
594	11-10-58	Betty J. Ainsworth

483: "I think all citizens should obay all laws and pay taxs and be as good a citizen as he can."

594: "I think all citizen should obey all laws and pay taxs and be as good a citizen as he can."

[fol. 1455]

R. The following are answers by two white applicants. Only one other application was submitted between the dates of these two:

No.	Date of Application	Name
508	4-8-58	Susie E. L. Sudduth (Mrs. B. K.)
510	5-10-58	Nelson Young Malone

508: "I believe as a good citizen that I should obey the laws of my country, and pay my taxes and vote in elections for the people whom I think best qualified."

510: "I believe as a good citizen that I should obay the laws of my country and pay my taxes and vote in the elections for the people whom I think best qualifiade."

S. The following are answers by two white applicants. Only five applications were submitted between them.

No.	Date of Application	Name
505	4–5–58	T. Ounida B. Kersh (Mrs. Sam)
511	5–19–58	Pearlie P. Malone (Mrs. Nelson Y.)

505: "As a citizen it is my duty to uphold the laws of the states and take a part in its government by paying taxes voting, and etc."

511: "As a citizen it is my duty to uphold the laws of the state and take a part in its government by paying taxes & voting and etc."

T. The following are answers by two white applicants.

No.	Date of Application	Name
506	4–5–58	John William Hurst
692	1–31–59	William C. Tucker

506: "To obay the laws of your country and the constitution. Pay your taxes & vote in our elections.

692: "to obay the laws of your Country and the Constitution. pay your taxes vote in our Election."

[fol. 1456]

U. The following are answers by two white applicants.

No.	Date of Application	Name
668	1–29–59	Jack Merkin
884	5–28–59	Olean D. Holman (Mrs. Willard D.)

668: "A Good citizen should vote in all elections, pay his just taxes and obey the law."

884: "A good Citezen should vote in all election. Pay his just taxes and Obey the law."

V. The following are answers by two white applicants.

No.	Date of Application	Name
688	1–30–59	Mrs. Holton S. King
786	3–11–59	Mrs. George Farrish (Carmen T.)

688: "Good citizens should obey the law and pay their taxes."

786: "Good Citizens should obey the law and and pay there taxes."

W. The following are answers by two white applicants.

No.	Date of Application	Name
736	2–3–59	Pauline P. M. Strain (Mrs. Derwood)
747	2–14–59	Helen A. Poole (Mrs. Ralph M.)

736: "The duties & obligations of a "good" citizen are to obey the laws of the community, county, state, & nation & to respect the constitutions of the state & nation."

747: "The duties & obligations of a good Citizen are to obey the laws of the Community, County, state, & Nation & to respect the Constitution of the state & Nation."

[fol. 1475]

X. The following are answers by two white applicants.

No.	Date of Application	Name
854	4-18-59	Edward B. Landrum
875	5-18-59	Claudy Z. Whatley

854: "pay taxes
obey the laws
uphold the constitution"

875: "pay your taxes
obey the laws
and up hold the Constitution."

Y. The following are answers by three white applicants.

No.	Date of Application	Name
855	4-22-59	Kenneth A. Downs
867	5-9-59	Jo Ann P. Simms (Mrs. John H.)
879	5-26-59	Christine P. Upchurch (Mrs. S. T.)

855: "A Citizen shewld fight for his County if necessary pay his debts and taxes and vote in every election."

867: "A citizen should fight for his Country, if necessary, pay his debts and taxes and vote in every election."

879: "A Citizen should fight for his Country if Necessary, pay debets and taxs and Vote in every election."

Z. The following are answers by three white applicants.

No.	Date of Application	Name
888	5-29-59	Jo Lynn C. Hardin
911	6-3-59	Henry Marcus Mounce
950	6-25-59	Dorothy Jane Vail (Mrs. Wm. R.)

888: "Vote in all elections, obey all laws, and be loyal to the U.S.A."

911: "Vote is all elections, obey all laws, and be loyal to the U.S.A."

950: "Vote in all elections, obey all laws, and be loyal to the United States of America."

[fol. 1458]

AA. Between January 27, 1960 and August 9, 1960, 108 white persons applied to register to vote in Leflore County. At least 18 of these gave answers to question 20 characterized by eight elements; some of which appeared in every answer. These are set out in the answer of one applicant as follows:

No.	Date of Application	Name
1202	6-3-60	John R. Bunch, III

"(1) Be Patriotic (2) Obey laws (3) Willingly serve public capacities (4) Respect Government authority (5) Pay taxes (6) Register & Vote (7) Be honest (8) Work & make a living"

Other typical answers in this group were:

No.	Date of Application	Name
1109	1-27-60	Mrs. Norman Lee Easterling
1152	2-1-59	John L. Hamrick
1174	3-2-60	Priscilla O. McCain
1215	7-27-60	Mona L. Gatlin (Mrs. Carlton)
1219	8-9-60	Mrs. Ruby L. Smith (Mrs. H. R.)

1109: "A person must be patroitic, willing to serve in all public capacities at any time, must observe all laws, must have proper respect of Government Authority, Pay all taxes when due. Should register and vote in all elections, Be honest and vote for the person you think is best suited for the office."

1152: "Be Patriotic, Obeerve the laws, Willing to serve the Jury, Army Civics, Matters and Jury service, Proper respect of Governmental Authority, Register and vote in all election Be honest"

1174: "My duties as a citizen of this state are to be patriotic, observe the law, willing to serve in all public capacities at any time, proper respect of Governmental authority, pay all taxes, register and vote in all elections, be honest, work and make a living."

[fol. 1459]

1215: "To serve in public capacities when able; Register & vote in all election; observe the laws; Be patriotic; proper respect of Governmental Authority Be honest; work & make a living. Pay all taxes."

1219: "In order to be a good citizen, I think one should be patriotic, observe all laws, and have proper respect for government authority."

BB. Four white applicants concluded their statement of duties and obligations with the phrase "betterment of the community (or country)." The first two filled out successively numbered applications.

No.	Date of Application	Name
289	10-18-56	Roy S. Sudduth
290	10-19-56	Sarah Ellen S. Leard
366	4-22-57	Evely Draper Pegues
791	3-16-59	Mrs. Verra M. Fleming

CC. Four white applicants filled out almost successively numbered forms, and stated as duties and obligations the idea of voting for a qualified candidate for office.

No.	Date of Application	Name
1310	1-31-61	Yvette Randall
1311	1-31-61	Charles W. Randall
1312	1-31-61	John T. Bennett
1314	1-31-61	Janie A. Felts (Mrs.)
1315	1-31-61	Rose Barbara Garrett (Mrs.)

DD. Four white applicants concluded their statement of duties and obligations essentially with the phrase "set a good example for others (people, or Mississippians) to follow."

No.	Date of Application	Name
251	6-14-56	Gladys N. Morgan
255	6-29-56	Charlotte G. Steele
320	1-29-57	Dorothy Bell Murff (Mrs.)
324	1-31-57	Joseph A. George, Jr.

[fol. 1460]

(2) Questions 19 and 20: Application Form of Mary Kathryn Huston

Mary K. Huston, a white teacher from Leflore County, completed the first application form in Leflore County on March 28, 1955. Her interpretation of Section 1 was:

> Q. 19: "The government of the state is divided into three separate sections or branches executive, judicial and legislative."

Her statement of duties and obligations of citizenship was:

> Q. 20: "It is the privilege of every citizen and also his duty to vote in the city, county, state and national elections, He should do this so that he may have a voice in the government. He should also support and uphold the laws of his state and national."

The elements which appear in Mrs. Huston's form for both Question 19 and Question 20, and separately for Questions 19 and 20, appear in 41 subsequent forms. They are*:

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* Where applicant did not receive Section 1, only the answer to Question 20 is set out.

No., Name, Date of Application	
5 Helen Boykins 4-1-55	Q.19: "The govt. is divided into 3 branches; Legislative, judicial and executive." Q.20: "A privilege of every good citizen to vote in order to have a voice in the government."
15 Walter C. Moses 4-11-55	Q.19: "the government of Mississippi is divided into three separate branches, each one independent of the other. They are executive, Judicial, and legislative branches." Q.20: "I think that every citizen should vote in all elections, whether large or small, It is his duty as a citizen to vote because it gives him a voice in the government."

[fol. 1461]

No., Name, Date of Application	
19 Mrs. Jack Rose 4-13-55	Q.19: "The power of the Government of the state is divided into three separate sections, these are executive, judicial and legislative." Q.20: "It is the privilege of every citizen of the United States to vote. It is his duty to vote in city, county, state, and National elections. He should do this so he may have a voice in the government. He should support and uphold the laws of his state, county, and nation."

21 Preston M. Reeves 4-14-55	Q.19: "The state of Mississippi government is divided into three parts, legislative, judicial, and executive." Q.20: "Every citizen has the right and privilege to vote. It is also his duty to help select the officials of his gov't of city, county state and country."
25 Lyman A. Lackey, Jr. 4-16-55	Q.19: "This section means that the government of the state of Mississippi shall be divided into three parts or branches; the executive, the legislative, and the judicial." Q.20: "It is the privilege and duty of every citizen to vote in his state, county, local and national elections. This gives him the right to have a voice in the government and the way it should be run. It also means that he should support and uphold all the laws of his nation and state."

[fol. 1462]

No., Name, Date of Application	
28 Iva N. Taylor 4-19-55	Q.19: "The government of the state is divided into three separate governing bodies, each having specified duties, these are the executive, judicial and legislative." Q.20: "It is the duty of every law abiding citizen to vote in the city, county, state and national elections. It is the duty of every citizen to uphold the laws of his country. Along with a duty it is a privilege to have a voice in the government."
39 Robert E. Gammill 4-25-55	Q.19: "Legislative, Judicial, and executive are the three separate sections of the Governmenet of the State." Q.20: "A good citizen should vote each election, because it is his privilege. City, County, State, Nation. He should support the laws of his country."
42 James E. Myers 5-2-55	Q.19: "The government of the state is divided into three sections, the legislature to one, judicial and executive." Q.20: "A good citizen always takes part in elections by voting at local and National elections and should support & uphold all the laws in the State and Nation."

44 Jessie B. Lowry 5-2-55	Q.20: "Its the duty of citizen to vote in all elections local and national elections. Be a law-bidding citizen."
51 Catherine E. Moon 5-5-55	Q.19: "The government of the state is divided into three separate sections or branches, executives, judicial, and legislative." Q.20: "He or she should have the privilege of voting in the city, country, state, and national elections so that they would be able to voice their opinion and support and up hold the laws of the nation."

[fol. 1463]

No., Name, Date of Application	
59 Sam P. Cooper, Jr. 5-27-55	Q.19: "The government of Mississippi is seperately divided into three parts. these are legislative, judicial and executive." Q.20: "Every citizen of the state of Mississippi should exercise his write to vote. He should support the government. He should vote in all elections, so that he will have an interest and voice in the way the different governments, (city, County & state) are run."

68 Mrs. Alma M. Wood 6-2-55	Q.19: "The government is divided in three parts legislative, judicial, executive." Q.20: "It is the duty, and privelege of every citizen to vote in the city, county, and state, He should also support and uphold the laws of his state, and Nation."
76 Mrs. Betty Jean Moss 6-9-55.	Q.20: "It is every citizens duty to vote in city, county, state and National elections. He shoud do this so he would have a voice in his government, He should uphold the laws of his state and nation."
85 Helen F. Gaston 6-21-55	Q.20: "It is a privilege of voting by every citizen and also his duty. So he may have a voice in our government."
88 Mrs. Milton A. Randall 6-22-55	Q.20: "I believe it is the duty & a privaledge of every American Citizen to vote at elections so that he might have voice in the government."
101 Charles W. Weed 7-1-55	Q.20: "Each citizen should vote because it is privilege. He should do this so he can have a voice in the government and also held support and uphold the laws of his state and nation."

[fol. 1464]

No., Name, Date of Application	
102 Hattie L. Potter 7-2-55	Q.19: "The government of the state is divided into three separate sections or branches executive, judicial and legislative." Q.20: "It is the privilege of every citizen and also his duty to vote in the city, county, and state and national elections. He should do this so that he may have a voice in the government. He should uphold the laws of his state and nation."
106 Maxine S. Nokes 7-5-55	Q.20: "Every one should take his or her part in all elections. They should all want to take part in upholding our state and National laws and government. It is not only a privilege but a duty."
108 Mrs. Nettie May Ingram 7-6-55	Q.20: "to obey and carry out all laws of county, state, and United State, all so uphold them. It is their privilege to vote in city, county, state, and National elections."
123 Bettie E. Strickland (Mrs.) 7-8-55	Q.20: "It is the duty and privilege of every citizen to vote in all county state & national elections so they may have a voice in the government."
128 Mrs. Vivian Burchfield 7-8-55	Q.20: "It is the duty of every citizen to vote in all city, county, state, and national elections. So that he may have a voice in the government."

133 Virginia F. Sligh 7-8-55	Q.20: "It is the duty and privilage of every citizen to vote in all city, county, state, and international elections. So that he may have a voice in the government
144 Mary E. S. Norris 8-11-55	Q.20: "Every citizen should exercise his privilege and duty to vote in the state, city, county & National elections so that he may have a voice in the government. He should support and uphold the laws of his state & Nation."

[fol. 1465]

No., Name, Date of Application	
148 Mrs. Annie L. Renfroe 10-13-55	Q.20: "It is the priveledge of every citizen to vote in the city, county state and National election. He may do this so he may have a voice in the government, He should also suport and uphold the laws of his state and nation."
150 Aubrey D. Tucker 10-31-55	Q.20: "It is the duty of every citizen to vote in the city, county, & state. Every citizen should have a voice in the government of the state and should vote to support the laws of his country."
152 Mrs. Leone S. Brewer 11-1-55	Q.20: "It is the privilege of every citizen and also his duty to vote in the City, County, State and National elections. He should do this so that he may have a voice in the government. He should also support and uphold the laws of his state and nation."

153 Winifred C. Whitfield 11-11-55	Q.20: "It is the duty and privilege of every citizen to Vote in every election. In doing so they have a voice in the government. One should support and uphold the laws of his state and nation."
165 Demetrios N. Magoulos 12-29-55	Q.20: "It is the duty and privilege of every citizen to vote the city, county, State, and National elections. Do this should a Voice in the government. Should also support and uphold the laws of this State and Great Nation."
166 Clifford L. Algood 12-29-55	Q.20: "It is the privilege of every citizen and also his duty to vote in city, county, state, and National election. He should do this so that he may have a voice in the government. He should also support and uphold the laws of his state and nation."
167 Leonard L. Pittman 12-29-55	Q.20: "It is the Privilege and duty of every citizen to vote in all elections. He should do this so that he may have a voice in the government. He should support and uphold the laws of his state and nation."

[fol. 1466]

No., Name, Date of Application	
169 Minnie Ethel N. Ezell (Mrs.) 12-30-55	Q.20: "It is the privilege of every Citizen and the duty to vote in all elections in the County, State, and Nation, because in voting he has a voice in government. It is also his duty to uphold all laws of his state and Nation."

184 Josephine P. Ragland (Mrs.) 1-12-56	Q.20: "To uphold the laws of the land and to exercise my right as a citizen by voting, thereby having a voice in the government of my country."
195 Mrs. Thelma L. Garrard 1-20-56	Q.20: "It is his duty and privilge to vte in the city, county, and state National elections. He should do this so that he may have a voice in the government. He should also support and uphold the laws of his state and nation."
204 William P. Purcell 1-24-56	Q.20: "Every Citizen in the State & Nations should vote, so they may be able to have a Voice in his government, In order to up hold the laws of the State & Nation."
216 Mary Catherine Bostick (Mrs.) 1-31-56	Q.20: "By obeying the laws of my country it is my previlege and duty to vote in the city, county and state and national elections. We must do this in order that we have a voice in our government. I should also uphold the laws in our state and nations."
304 Mozelle Parker Webb 1-4-57	Q.20: "Support and uphold laws of state & nation. Use your priviledge to vote in order to have a voice in the government."
309 Dorothy W. Kelly 1-9-57	Q.20: "It is the privilege and duty of every citizen to vote in all elections. He should do this so he may have a voice in the government. He should support and uphold the laws of his state and nation."

[fol. 1467]

No., Name Date of Application	
333 Henry R. Heard 2-1-57	Q.20: "It is the duty & priviledge of every citizen to vote the city, county, state, national, elections. Do this should a voice in the government. Should also support & uphold the laws of this state and great nation."
347 Mrs. Lottie G. Leflore 3-2-57	Q.20: "It is the privilge and duty of every sitison to vote in all elections. It is all so his duty to uphold all laws of the state and nation."
354 Mrs. Jean B. Johnson 3-7-57	Q.20: "It is a citizens duty and privildge to vote. He should vote in all elections, This gives him a voice in the government. He, should uphold and support the laws of his state and nation."

[fol. 1468] (3)Question 19 (Interpretation)

The following is a selected group of standard interpretations by accepted white applicants.

Section 30

The following white applicants each gave as the interpretation of Section 30: "A person cannot be put in prison for a debt." The first three applicants also included in their answer to question 20 the phrase "obey the law", and concluded with "vote in . . . election[s]":

No.	Date of Application	Name
408	12-13-57	Susie M. Keith
468	1-31-58	Mae Bell P. Joseph
858	4-29-59	Mrs. Anne R. Crowder
855	4-22-59	Kenneth A. Downs
864	5-9-59	Richard W. Peeples
948	6-24-59	Joseph Johnson
988	7-1-59	Grace Carolyn Mitchell Watkin

Except for the omission of the word "a" in two cases, the following white applicants each gave as the interpretation of Section 30: "(A) person cannot be placed in prison for (a) debt.":

No.	Date of Application	Name
567	9-29-58	King C. Long
786	2-27-59	Andria A. Knight Tackett
982	7-27-59	Shirley Marie Daniels
1041	8-25-59	Evelyn Sikes Arline

The following white applicants gave as the interpretation of Section 30: "One cannot be put in prison for debt." All three wrote "obey the law" or "abide by the law" in answering question 20:

No.	Date of Application	Name
786	3-11-59	Mrs. George Farrish
842	4-11-59	Mrs. Lois R. Farrish
884	5-28-59	Mrs. Olean D. Holman

[fol. 1469] Except for the omission of the word "a" in four of the following applications, each of the following ten white applicants gave as the interpretation of Section 30: "A person cannot be put in jail for a debt." Seven of these included the elements "pay tax" and vote in their answers to question 20. All included "vote".

No.	Date of Application	Name
510	5-10-58	Nelson Young Malone
718	1-31-59	Richard B. Findley
972	6-29-59	Mrs. James G. Wier
977	6-29-59	Margaret Childress Goss
982	6-30-59	Joe Alton McClure
1028	7-3-59	John Wayne Counts
1048	10-7-59	Howard C. Ju
1140	1-29-60	Buck D. Barry
1154	2-1-60	Homer A. Turner
1213	7-8-60	Mon W. Set

The following white applicants filled out successive forms. Each one was given Section 30 to interpret. Except for the omission of the word "a" as noted, they both wrote: "No one can be put in jail for (a) debt."

No.	Date of Application	Name
826	4-1-59	Mrs. Maudie L. W. Johnson
827	4-1-59	Paul R. Herron

The following white applicants gave similar interpretations of Section 30, ending with the phrase "for owing a debt." Both applicants also had short answers to question 20 which ended with the phrase "vote in all elections." These applications were accepted. Both have similar duties and obligations.

No.	Date of Application	Name
921	6-9-59	Johnny Sanders
938	6-22-59	Thomas Lee Norris

[fol. 1470] Section 148

The following white applicants gave identical interpretations of Section 148. Each wrote: "The legislature provides that the Supreme Court shall be held twice a year at the seat of government."

No.	Date of Application	Name
564	9-24-58	Mrs. Clara E. B. Bledsoe
1169	2-17-60	Ruby E. McDonald

The following white applicants gave substantially identical interpretations of Section 148, except for the word "shall" as noted: "The legislature shall provide that the Supreme Court (shall) be held twice in each year at the seat of government."

No.	Date of Application	Name
628	1-19-59	Douglas B. Johnson
964	7-2-59	Marvin Wayne Richardson

The following white applicants gave identical interpretations of Section 148. Each wrote: "The legislature provides that the Supreme Court shall be held twice in each year at the seat of government.

No.	Date of Application	Name
493	3-7-58	Rose E. L. Bishop
497	3-17-58	Leonard D. Ellis
1111	1-27-60	Mrs. Marguerita W. Rowland

The following white applicants filled out successively numbered applications on the same day. Except for interchanging "in" and "at" as noted, each one wrote for his [fol. 1471] interpretation of Section 148: "The Supreme Court shall be held twice a year at (or in) Jackson Mississippi which is the seat of government."

No.	Date of Application	Name
305	1-5-57	Edward Earl Fitts
306	1-5-57	Douglas G. Johnson

The following accepted white applicants gave very similar interpretations of Section 148.

No.	Date of Application	Name
711	1-31-59	James L. Jones
778	3-6-59	Carl Daniels
788	3-12-59	Mrs. Betty J. Sellers

The following white applicants gave identical interpretations of Section 148, except for the omission of the words "in" and "shall" by the first applicant as noted. They wrote: "The legislature provides that the Supreme Court (shall) be held twice (in) each year at the seat of government."

No.	Date of Application	Name
796	3-20-59	Mable A. Rickman
1017	7-3-59	Mrs. Laure Dodd Lee

The following white applicants wrote identical interpretations of Section 148, except for the addition of the words "shall" and "the" at noted. They wrote: "The legislature provides that the Supreme Court (shall) meet twice a year at (the) seat of government."

No.	Date of Application	Name
409	12-18-57	George W. Bankston
746	2-13-59	Ralph M. Poole

[fol. 1472] Section 67

Each of the following white applicants gave substantially identical interpretations of Section 67. Each followed the basic pattern: "During the last three days of the legislature (or session), no bill can be introduced (into either house)." The last two were after August 8, 1961.

No.	Date of Application	Name
175	1-5-56	Mrs. Lovvertia H. Montgomery
311	1-17-57	Annie Estelle Burchfield
777	3-5-59	Mrs. Kenneth R. Lloyd
967	6-29-59	Marcus Haril Johnson
975	6-27-59	Doris Noman Ola
1021	7-3-59	Leo Pittman Edwards
1032	7-3-59	Douglas Eugene Henderson
1034	7-6-59	Tommie D. Corley
1472	12-21-61	Marjorie A. Crowder
1979	3-1-63	Mrs. Zelma E. Jordan

The following white applicants gave identical interpretations of Section 67, except for the use of the words "in", "should", or "shall", as noted. They wrote: "(In) the last three days of the session no new bill (should or shall) be introduced into either house of the legislature. The last two were after August 8, 1961.

No.	Date of Application	Name
692	1-31-59	William C. Tucker
1438	8-30-61	Robert W. Taylor
1630	4-26-62	Mrs. Arthur C. Berry

Section 37

The following white applicants gave similar interpretations of Section 37. All followed the pattern: "The members of the legislature are elected in the counties and dis-
[fol. 1473] tricts as provided by law."

No.	Date of Application	Name
604	12-29-58	Martin M. Romie
683	1-20-59	Roy L. Logan
688	1-30-59	Mrs. Holton S. King

Section 123

The following white applicants gave identical interpretations of Section 123, except for the addition of the word "all" as noted. They wrote: "It is the duty of the governor to see that the (all) laws are faithfully executed." The last three applicants gave short answers to question 20, consisting almost entirely of the elements "pay tax", "vote", and "obey the law."

No.	Date of Application	Name
633	1-23-59	Mrs. Vivian C. Long
635	1-23-59	Mrs. Martha Pauline Marshall
747	2-14-59	Mrs. Helen A. Poole
954	6-26-59	Mrs. James A. Ferguson
964	6-27-59	Mrs. W. J. Lougee
1055	12-1-59	Billy Lynn Simpson

Section 93

The following white applicants gave identical interpretations of Section 93, except for the tense of "retire", as noted. They wrote, "No officer can retire (or, be retired) on pay or part pay."

No.	Date of Application	Name
669	1-29-59	Mallory C. Davis, Jr.
836	4-4-59	Harvey Morris, Jr.

[fol. 1474] c. Grading

From March 28, 1955 to August 8, 1961, there are numerous examples of white persons who were accepted with bad interpretations on their forms. In addition, ten persons in giving their interpretation copied, or referred to the headnotes of judicial decisions following the Constitutional provisions.

(1) Persons with bad interpretations

No.	Date of Application	Name
43	5-2-55	Howard J. Moon
103	7-2-55	Marie R. McGinnis
112	7-6-55	Mary J. Bruce
134	7-8-55	Emma S. Crosby
173	1-3-56	Mary McI. Beno
193	1-18-56	Mrs. Stella J. Campbell
213	1-31-56	Bettye J. Jones
214	1-31-56	Dorothy E. R. Mullins
243	5-10-56	Katherine G. Hammons
262	8-3-56	Walter R. Henderson
323	1-31-57	Charles W. Krablin
351	3-7-57	Bernard L. Akin
362	3-21-57	John L. Skelton
390	10-16-57	Gloria S. Abel
401	11-8-57	Sarah Jane H. Skinner
410	12- -57	Annie Lois Algood
420	1-10-58	Robert H. Smith
445	12-28-58	Katie V. Ainsworth
555	9-11-58	James E. Kitchens
571	10-1-58	Billie C. Jones
591	11-3-58	Dominic Fratesi
593	11-6-58	Mrs. Frances M. E. Bissell
662	1-29-59	Mrs. Omeva C. Lowry
603	12-29-58	Robert E. Wiggins
767	2-28-59	L. C. Andrew
774	3-5-58	Millarn G. Murphree, Jr.
801	3-23-59	David L. Sellers
802	3-23-59	Dorothy L. Vaughn
833	4-4-59	James H. McShan
844	4-11-59	Floyd C. McGaugh
853	4-18-59	Jimmy D. Slater
865	5-9-59	Norman C. Garriga
870	5-13-59	Peggy J. Hoover
885	5-29-59	Daves Williams Gordon

[fol. 1475]

904	6-2-59	Milton L. Conner
957	6-27-59	Kay Helen Kyle
1011	7-3-59	Mrs. Karl G. Muller
1090	1-22-60	May Clark Hammons
1122	1-28-60	Sidney Marie McGinnis Bailey
1143	1-29-60	Rex Dale Parker
1150	1-30-60	Robert H. Bevill
1252	1-20-61	Mrs. Alice C. Davis
1295	1-30-61	Jobie H. Pittman
1297	1-30-61	Mrs. Loye Mims

(2) Persons copying or referring to Annotations for their Interpretations.

No.	Date of Application	Name
165	12-29-55	Demetrios Nicholas Magoulas
252	6-16-56	Edward Earl Blakemore
280	9-24-56	Arthur Samuel Andrews
330	1-31-57	Dorothy Fay LeTour
333	2-1-57	Henry R. Heard
360	3-3-57	Malcolm Welch
427	1-17-58	Dewitt Clinton Peteet, Jr.
543	8-2-58	Mrs. Sam H. Woodard (Mary Alice)
559	9-16-58	Mary Louise Bennett Casiday
589	10-29-58	William Charles Thomas
674	1-30-59	Varnal R. Deal

[fol. 1476]

Part III

The following Negroes have been denied the right to vote by the use of the constitutional interpretation test or the requirement for stating the duties and obligation under a constitutional form of government. The number in the left-hand margin has reference to the number given in listing the record of the interview in answer to interrogatories 23 and 24 of the State of Mississippi. If no number is listed in this margin, the inclusion of the name is based on an analysis of the application forms. The number in the right-hand margin has reference to the number on the application form.

(a) Constitutional Interpretation Test

	Name	Address	
	Erma Jewell Robinson	421 W. Stone St.	1958
	Teva Thomas	No. 9 McAlley	1991
	Addie Mae McGill	420 Stephens	1992
42031	Ruby Harris	401 Pelican	1559
			1993
	Beatrice Westbrook	421 Stephens Ave.	1994
	Hattie Mae Marye	111 West Loft St.	2008
	Rebecca Smith	509 Court St.	2012
42009	Mary E. Coleman	315 E. McLaurin St.	2013
	Mary Johnson	Itta Bena	2021

[fol. 1477]

	Inell Myrick	925 Howard St.	2024
	Leonia V. Luckett	Itta Bena	2040
42002	Millie Bell	702 Ave. G.	2059
	Rebecca Crain	Rt. #3, Box 209	2065
42072	Velma Hazzard	Greenwood	2079
	Elmira Branch	1108 Broad St.	2080
42040	Mary Lee Lane	214 Ave. H.	2085
42036	Aaron Johnson	1110 E. Lawn Drive	1093
	Fredyna L. Rogers	701 Roosevelt Ave.	1689
	Ruby E. C. Green	414 Stevens	1558

	Name	Address	
42015	Maxine L. Duncan	211 W. Taft	1716
	Freddie Lee Neal	308½ Broad St.	1699
	Essie Lee Broom	111 W. Taft	1717
	Charles R. Higginbotham	Itta Bena	2053
	Nolah R. Henderson	209 W. Scott St.	1300
42030	Lillian B. Harris	2091 E. Stronghurst	170
	Susie M. McDonald	Itta Bena	275
	John M. Nichols	714 Ave. L.	314

(b) Duties and Obligations

Name	Address	
Lillian B. Harris	2091 E. Stronghurst	1407

[fol. 1478] Sunflower #12

Part I

A

The following Negroes were not permitted to apply for registration. All the events described herein occurred in the Circuit Clerk's office in Indianola, Mississippi.

67148	Dec. 1957 Refused Campbell-R	Went to Registrar's office with Ollie Young and was told that Registration had been "held up"; was allowed to apply to register.
67149	Dec. 1957 Refused Campbell-R	He went with another Negro, Claude Wooton, to register. Campbell told them that registration had been held up and did not permit them to apply.
67075	Jan. 1958 Refused Campbell-R	Went to Registrar's office at Indianola, Miss. with Mrs. Hattie Sisson. Cecil Campbell told them they could not make application to register. She and Mrs. Sisson returned shortly thereafter and Mr. Campbell told them again that they could not apply to register.

67121	Jan. 1958 Refused Campbell-R	Went to Registrar's office with Irene Johnson. Cecil Campbell told them he could not let them register. She and Mrs. Johnson returned shortly thereafter and Mr. Campbell again told them they could not apply to register.
67047	Feb. 1959 Refused Man	Went to Registrar's office in Indianola at about 4:15 PM. She was told by the man in the office that it was too late to attempt registering because it takes time to fill out the form.
67057	Early 1959 Refused Man	Went to Registrar's office in Indianola. The man in the office told him that the "books" were in Jackson because they had gotten crossed up. The man said he'd notify Mr. Harvey when they came back. He was never notified.

[fol. 1479]

67127	Aug. 23, 1962 Refused Man	Went to Registrar's office with Mrs. Vinnie Doris, Rev. Jeff Surney, and Mrs. Rennie Williams. The man in the office told them that the Registrar was out and did not permit them to fill out applications.
67129	Aug. 23, 1962 Refused Man	Went to register with Mrs. Vinnie Doris, Mrs. Jeff Surney and Mrs. Rennie Williams; they were told the Registrar was out; the man did not permit them to apply for registration.
67034	Aug. 1962 Refused Man	Went to Registrar's office in Indianola with Rev. Jeff Surney, Mrs. Jeff Surney and Mrs. Rennie Williams. Told Registrar was out and was not permitted to fill out an application to register.

67060	Sept. 1962 Refused Woman	Went to Registrar's office in Indianola with Leonard Davis, Phyllis Baldwin and Rennie Williams; they were told that Mr. Campbell was in court and to come back in October.
67031	Sept. 1962 Refused Woman	Went to Registrar's office in Indianola with Mrs. Rennie Williams, Phyllis Baldwin and Levi Herring. The woman in the office told them Mr. Campbell was in court and could not see them. She said they might catch him in October and did not permit them to register to vote.
67137	Dec. 1962 Refused Man	Went to Registrar's office with Rebecca McDonald. Told that Registrar had gone to see his grandchildren and would be gone two weeks. They were not allowed to apply to register.
67025	Jan. 1963 Refused Man	Went to Registrar's office in Indianola between 10 and 11 A.M. Told by clerk working in office she had no business there. The clerk left the room and didn't come back after giving her an application form. She waited 25 minutes. She was never shown section of constitution to copy, so she left.

[fol. 1480]

67026	Feb. or Mar. 1963 Refused Woman	She went to Registrar's office in Indianola. Told by woman working in the office that Mr. Campbell was in court and she could not be registered. Told to come back in two weeks.
67123	Spring, 1963 Refused Man	Went to Registrar's office with four other Negroes. Arrived 11 AM. Told by man in office to wait and he would be back in a few minutes. Waited until 5 PM. Man never came back.

67045	Late Spring or early summer, 1963 Refused Campbell-R	Went to Registrar's office in Indianola about 9 AM. with Joe Townsend and David Clifton Smith. A note in the door of office said Mr. Campbell went to funeral. They returned at 1 PM. Told he was rejected on previous attempt. Mr. Campbell would not let them fill out application forms until white women who were filing out forms had finished. Waited two hours and left without taking test.
67123	June 1963 Refused Campbell-R	Same as 67045
67135	Late Spring or early summer, 1963 Refused Campbell-R	Same as 67045
67113	April 1963 Refused Woman	Went to Registrar's office with Mattie Fleming at about 9:30 AM. Told they could not apply to register because Circuit Clerk was in court.
67153	April 1963 Refused Woman	Went to Registrar's office with Gertrude Rogers. The woman clerk said the Registrar was not in and refused to let them make application.

[fol. 1481] Sunflower #12

Part I

B

The following Negroes were unreasonably delayed in determining the results of their application forms after the publication requirement had been met. The events described occurred in the Circuit Clerks office in Indianola, Mississippi.

67133	Sept. or Oct., 1962 Delay Woman	Went to Registrar's office to determine result of attempt to register Aug. 14, 1962. Told that registrar was not in. She was not told result. Shortly thereafter she went again to Registrar's office to determine result of Aug. 14, 1962 attempt to register. She was not told result because registrar was not in.
67075	Aug. 1962 Delay Acc. Woman	Went to Registrar's office in Indianola with Mrs. Hattie Sisson, Mrs. Celeste Davis, Mrs. Louis Taylor and Mrs. Rebecca McDonald, and filled out application forms; told to come back after name published twice in the newspaper to find out if passed. Went back to Registrar's office at Indianola with Celeste Davis on September 7, 1962 to see if they passed test and were told Mr. Campbell was in court and only he could tell them if they had passed. She was finally told she had passed when she checked again on November 26, 1962.

[fol. 1482] **Sunflower #12**

Part I

C

The following qualified Negro citizens were rejected on the basis of their application form. All events took place in Circuit Clerks office in Indianola, Mississippi.

67047	Spring, 1960 Rejected Campbell-R	Went to Registrar's office in Indianola with Hattie Sisson, Ollie Young and Floyd Surney. Arrived about 11 AM. Told to come back after lunch. After lunch three police officers were present. Filled out form. Mr. Campbell handed forms to unknown white man to examine. Told they did not pass.
67121	Spring, 1960 Rejected Campbell-R	Went to Registrar's office with Ollie Young, Ruth Foster and Floyd Surney. Arrived at 11 AM. Told to come back after lunch. Filled out form after lunch (1 PM), and was rejected.
67121	Feb. 1962 Rejected Campbell-R	Went to Registrar's office. Filled out form and was rejected. Mr. Campbell told her to go see Mrs. Shurden in Drew, Miss., which she did. Mrs. Shurden told her the place to register is Indianola.
67121	Aug. 14, 1962 Rejected Campbell-R	Went to Registrar's office with Mrs. Irene Johnson, Mrs. Celeste Davis, Mrs. Louise Taylor, and Mrs. Rebecca McDonald. She filled out a form and was told she would have to come back after name appeared in paper to get result. She was told she was rejected on August 31, 1962. On August 31, 1963 she completed another form and was told on November 26, 1962 she had been accepted.

67054	Aug. 31, 1962 Rejected Campbell-R	Went to Registrar's office in Indianola with busload of Negroes. Only three Negroes allowed to fill out form at one time. Filled out form. Required to return to find out if she passed. When she returned she was notified that she was rejected (she applied again in January 1963, after waiting for the publication period. She was accepted).

[fol. 1483]

67135	Feb. 1963 Rejected Campbell-R	Went to Registrar's office with wife, Lucille Townsend and Otis Foster. He filled out an application form. Required to go back to get result of test. He was rejected.

[fol. 1484]

Sunflower #12

Part I

D

The following Negro citizens who are registered to vote in Sunflower County were not permitted to register for municipal elections in Ruleville. All events occurred at City Hall in Ruleville, Mississippi. Mayor Durrough of Ruleville refused to permit them to register.

67075—November 1962
67094—February 1963
67095—February 1963

[fol. 1485] Benton #14

Part I

A

The following Negro citizens were refused registration as described. All events took place at the Courthouse in Ashland, Mississippi.

5025	Summer, 1960 Refused Mathis-R	Mr. Mathis told him when he asked about registering that he needed poll tax receipts before registering. He had not paid any and so left.
5026	Fall, 1960 Refused Mathis-R	He and other Negroes asked Mr. Mathis if they could register. They left when Mathis said that poll taxes had to be paid two years in succession before registering.
5011	April, 1961 Refused Mathis-R	He and another Negro were told by Mathis that they had to have paid poll taxes for two years in a row before registering. He had missed 1959, so could not register.
5014	April, 1961 Refused	He and another Negro were told at Circuit Clerk's office that they had to have two poll tax receipts to register. They had only one and so they were not permitted to register.
5007	October, 1951 Refused Mathis-R	Mr. Mathis told her and her husband that they could not register until poll tax was paid for two years.
5008	October, 1961 Refused Mathis-R	Mr. Mathis told him and his wife that they could not register until they had paid poll tax for two years.

[fol. 1486] **Benton #14**

Part I

B

The following Negro citizens of Benton County were delayed in their attempts to register to vote. The events described below occurred at the Circuit Clerk's office in Benton County.

5044	Feb. or Mar. 1955 Refused Mathis-R	In Feb. or Mar., 1955 he went with another Negro to the office of the Circuit Clerk. J. L. Mathis, Circuit Clerk, told him he could not apply because there were no forms available. On another visit at about the same time a lady told him that the clerk would be out for several days.
5007	Summer, 1962 Refused	This person was unable to apply because the registrar was not at the office during regular hours on three occasions.
5041	July-Aug., 1962 Refused	Unable to find registrar at his office on three occasions during regular hours.
5002	Sept., 1962 Refused	Unable to apply because clerk did not come to office, although she waited all day.
5022	Jan., 1963 Accepted but not registered Mathis-R	This applicant was notified that she passed the test, but she could not find the registrar when she went back to sign the book.
5003	1962 Mathis-R	This applicant attempted unsuccessfully to find the registrar at his office during regular business hours on 10 separate occasions.
5002	July, 1962 Rejected Mathis-R	This lady and 4 other Negroes waited from 9:00 A.M. until noon before the registrar arrived at his office.

C

The following Negro citizens of Benton County were not permitted to register to vote because of the interpretation test or perfect form requirement. The events described [fol. 1487] occurred at the Circuit Clerk's office in Benton County.

5015	Oct. 18, 1962 Rejected— Interpretation Mathis-R	Applied before Mr. Mathis; asked for instructions on form at least twice; was told he had to fill it out. He believes he interpreted § 189, Miss. Const. He was notified by mail that he was rejected after his name was published twice.
5049	12-31-62 Rejected— Interpretation and per- fect form Mathis-R	Applied to Mr. Mathis with another Negro. Mr. Mathis gave her a form which she filled out and returned. Her name was published twice and she received a letter stating she was rejected. She was told not to sign the form until she had taken an oath.

[fol. 1488] Benton County #14

Part II

Application Forms
(Preliminary Analysis)

1. Number of Forms

The Registrar was notified of an investigation by the F.B.I. into discrimination in registration and voting on 11/13/61. On 6/13/63 the Department of Justice asked the registrar to permit photographing of his records. The first form is dated 6/25/62. The totals of forms from this date are:

White	
Accepted	101
Rejected	32
Negro	
Accepted	2
Rejected	43
Race Unknown	
Accepted	1
Rejected	2

2. Periods Which Forms Cover

a. Prior to 6/13/62—date of request for photographing

Number of Forms: 0

b. Period: 6/25/62-12/20/62
(Date of first form to date of first photographing)

Number of Forms:

White	
Accepted	14
Rejected	8
[fol. 1489] Negro	
Accepted	2
Rejected	39
Race Unknown	
Rejected	2

c. Period: 12/20/62-5/8/63 (From date of first photography to date of second photography)

Number of Forms:

White	
Accepted	87
Rejected	24
Negro	
Accepted	0
Rejected	4
Race Unknown	
Accepted	1
Rejected	1

[fol. 1490] Calhoun County #15

Part I

A

The following incidents which occurred in Calhoun County indicate the difficulties a Negro faced when he attempted to pay his poll tax. These events occurred at the Sheriff's office in Calhoun County.

7000	1961 Delayed	Went to sheriff's office alone in 1961 to pay poll tax but was told the man to see had gone and would be back the next day. The next day he was told the man was gone and that he would have to pay his poll tax next year although he saw persons taking money from white persons.
7000	4-1-61 Refused Man and Woman	Went to the sheriff's office to pay taxes. After paying other taxes, he asked if he could pay his poll tax. The man who waited on him said, "They ain't no use of that", and did not take his tax.

[fol. 1491] Grenada #16

Part II

Application Forms

1 & 2 Number of Forms and Period Covered

The first form is dated April 6, 1955. The records were photographed on April 4, 1963. The total number of forms by race is:

White	
Accepted	1348
Rejected	0
Negroes	
Accepted	4
Rejected	22
Unknown	
Rejected	3
Pending	57

3. Analysis of Forms

a. Selection of Constitutional Sections

Section	White	Negro	Pending Unknown	Number of Words
9	1303	14	21	11
16	22	1		15
21	10	1	3	35
59	2	2	1	136
61		1	2	26
85			1	45
124		2		161
147	1		2	98
159	3	3	3	57
203	2			58
239	3	2	22	45

[fol. 1492] The first time a section other than section 9 was given to any applicant was January 30, 1961. Until that date 984 applicants, including the 4 Negroes who were registered received Section 9 to interpret. The following is a chart of selection of sections by race since January 30, 1961, the date the registrar began to use other sections of the Constitution (Chart does not include pending applications).

Section	White	Negro
9	345 (90%)	4 (27%)
16	22	1
21	10	1
59	2	2
124	0	2
147	1	0
159	3	3
203	2	0
239	3	2

b. Assistance to White Applicants

(I) Section 9 of the Mississippi Constitution is:

"The Military shall be in strict subordination to the civil power".

Identical and virtually identical answers to this section fall into 14 patterns which are shown below.

[fol. 1493]

Pattern No.		Interpretation	No. of Applicants
1.		The Civil Government Will Always Be over the Military.	107 (Total)
	a.	"The civil government will always be over the military."	53
	b.	"The civil government shall always be over the military."	12
	c.	"The civil government will always be over the military government."	7
	d.	Substantially identical	35
2.		The Civil Power Will Always Be over the Military.	35 (Total)
	a.	"The civil power will always be over the military."	10
	b.	"Civil power will always be over the military."	3
	c.	"The civil power shall always be over the military."	8
	d.	Substantially identical.	17
3.		The Civil Power Shall Be over the Military.	16 (Total)
	a.	"The civil power shall be over the military."	7
	b.	"The civil power shall have power over the military."	2
	c.	Substantially identical.	7

[fol. 1494]

4.		The Civil Power Shall Always Be over the Military.	12 (Total)
	a.	"The civil power shall always be over the military power."	3
	b.	"The civil power will always be over the military power."	2
	c.	"The civil power will be over the military power."	2
	d.	Substantially identical.	5
5.		The People Shall Have Control of Military Affairs	54 (Total)
	a.	"The people shall have control of military affairs."	8
	b.	"The people shall have control over military affairs."	3
	c.	"People shall have control of military affairs."	2
	d.	"The people shall have control of all military affairs."	5

Pattern No.		Interpretation	No. of Applicants
	e.	"The people shall have control over all military affairs."	2
	f.	Substantially identical.	34
[fol. 1495]			
6.		Civilians Shall Be In Charge of the Government	71 (Total)
	a.	"Civilians shall be in charge of the Government."	42
	b.	"The civilians will be in charge of the government."	5
	c.	"Civilians must be in charge of the government."	12
	d.	"Civilians should be in charge of the government."	4
	e.	Substantially identical.	8
7.		The Civil Power Shall Have Control of Military Affairs	159 (Total)
	a.	"The civil power shall have control of military affairs."	40
	b.	"The civil power shall have control of the military affairs."	3
	c.	"The civil power shall have control over military affairs."	14
	d.	"The civil power has control of military affairs."	7
	e.	"The civil power has control over military affairs."	7
	f.	"Civil power shall have control of military affairs."	5
	g.	Substantially identical.	83
[fol. 1496]			
8.		The Civil Power Has Control over the Military	57 (Total)
	a.	"The civil power has control over the military."	6
	b.	"The civil power shall have control over the military."	6
	c.	"The civil power shall have control of the military."	4
	d.	Substantially identical	41
9.		The Civil Power Shall Have Control of Military Power	38 (Total)
	a.	"The civil power shall have control of military power."	5
	b.	"The civil power shall have control of the military power."	3
	c.	"The civil power shall have control over military power."	3
	d.	Substantially identical	27
10.		The Military Shall Be Under the Civil Power	56 (Total)
	a.	"The military shall be under the civil power."	13
	b.	"The military shall be under Civil power."	2
	c.	"The military will always be under the Civil power."	4
	d.	"The military is under the civil power."	6
	e.	Substantially identical	31

[fol. 1497]

Pattern No.		Interpretation	No. of Applicants
11.		The Military Will Always Be Under the Civil Government	15 (Total)
	a.	"The military will always be under the civil government."	6
	b.	"The military shall always be under the civil government."	3
	c.	Substantially identical	6
12.		The Military Will Be Under the Civil	16 (Total)
	a.	"The military will be under the civil."	4
	b.	"The military will always be under the civil."	3
	c.	"The military shall always be under the civil."	3
	d.	Substantially identical	6
13.		The Civil Will Always Be over the Military	10 (Total)
	a.	"The civil will always be over the military."	6
	b.	Substantially identical	4
14.		The Civil Government Shall Be over the Military	12 (Total)
	a.	"The civil government shall be over the military."	4
	b.	Substanti ally identical	8

[fol. 1498] It should be noted that the four accepted Negro applicants' interpretation of section 9 does not fall into any one of the 14 patterns delineated hereinabove.

(2) There are 27 application forms, twenty-five of which were filled out in 1961 and two that were filled out in 1961, that do not have a section of the Mississippi Constitution copied in answer to question 18. These forms have a question on the form which is then answered in question 19.

Seventeen forms have the question: "what is meant by an ex post facto law?"

Twelve of these answered to the effect that it is a law that tends to work backwards.

[fol. 1499] Marshall County #18

Part I

A

The following Negroes of Marshall County were not permitted to apply for registration. The events described below occurred at the Circuit Clerk's office in Marshall County.

47018	10-1961 Refused Lady	Tried twice in a week's time. Each time lady in the office said clerk who handles registration was not there.
47019	3-1963 Refused Lady	Went to office at about 3:00 P.M.; one white person was sitting at table filling out registration form; lady said she would take only one at a time and would not have time for her that day.
47028	May-June 1960 Refused Lady & Man-R	On three occasions in May-June 1960 female employee in clerk's office said application must be made to clerk and clerk was not there. On fourth try, clerk said he did not have time to administer the test and she would have to return.
47041	5-3-61 Refused Lady	Lady in office of Registrar advised applicant that Circuit Clerk was working on his farm and no one else could take his application.
47034	1959 Refused Man	As he arrived at the Circuit Clerk's office, the clerk was just leaving. Said there would be a long delay before he would be processed; left without waiting.
47041	1960 Refused Lady	Tried to register twice in 1960. Each time young lady in office said the Circuit Clerk handles voter registration personally. He left without making application.

44014	February 14, 1962 Rejected Wiggins-R	The day after her first attempt she returned. She was again given section 21 and again did not interpret the expost facto part. She was told this by the Registrar and told that she did not pass.

[fol. 1516]

44018	March 19, 1962 Rejected Wiggins-R	He was given the section about habeaus corpus to interpret. He copied an annotation for his interpretation which the registrar noted and then told him he did not pass.
44072	March 21, 1962 Rejected Woman	That afternoon she went with Mrs. Annie Carter to register. Both were given section 21 and both were told that they did not have a right interpretation for the section, and were rejected.
44071	March 21, 1962 Rejected Woman	She went with Miss Mary E. Bailey to register. Both given forms and section. She was told that neither her interpretation nor statement of the duties of citizenship were correct.

[fol. 1517] The following Negro citizen of Lowndes County was deterred by the interpretation test from applying to register to vote. This event occurred at the Circuit Clerk's office in Lowndes County.

44036	February, 1959 Deterred Wiggins-R	He went with his wife to register. His wife tried first and was told she did not pass. He did not even try because he then knew that he could not pass.

[fol. 1518] Lowndes Co. #32

Part II

1 and 2. Application Forms

On June 21, 1962, the United States served on the Registrar a demand for inspection of the voting records of Lowndes County. On July 6, 1962, the United States ap-

[fol. 1500] Marshall County #18

Part I

B

The following Negro citizens of Marshall County filled out application forms and interpreted sections of the Constitution, were told they would hear the results, and then were not notified if they passed or failed or learned the results only after long delay. The events described below occurred at the Circuit Clerk's office in Marshall County.

47000	2-1958 Never told results Clayton-R	Went to the office of the Registrar and filled out a form; when he had completed the form, including his interpretation of a section of the Mississippi Constitution, he was told he would hear the results in 2 weeks; he was never informed of results.
47000	10-1958 Never told results Lady	Went to office of Registrar and filled out form; copied and wrote interpretation of portion of Miss. Constitution; he was told he would hear in 30 days; never received notice of results.
47000	1959 Never told results Clayton-R	Went to office of Registrar and filled out form; copied and interpreted a portion of Miss. Constitution; Clayton said application had to be reviewed by a "committee"; he never heard results of application.
47022	1959 Never told results Clayton-R	Went to the office of the Registrar; filled out application form, then copied and wrote interpretation of portion of Miss. Constitution; Clerk said he would hear results later; returned several times to inquire but never found clerk in.

plied to the Court for an order requiring production and inspection of the records. On August 28, 1962, the United States filed a lawsuit naming the Lowndes County registrar as a defendant. The Government photographed the records on March 25, 1963, pursuant to an order granted by the three-judge court under Rule 34 in the case of *United States* v. *Mississippi, et al.*

There are 1137 accepted applications for applicants from November 9, 1960, the date of the first accepted application, to March 6, 1963.

The first rejected application is dated January 30, 1956. There have been 43 Negroes rejected and 17 white persons rejected since January 30, 1956.

[fol. 1519]

	White Rejects		Negro Rejects	
1956	0		9	
1957	0		3	
1958	0		2	One unable to read or write
1959	0[1]		1	
1960	2[2]	Neither could read or write	2	
1961	1[3]	dated Nov. 28, 1961, Could not interpret Sec. 1	6	
1962	4[4]	Three could not interpret Sec. 16 on ex post facto laws. The fourth typed his absentee registration and it was marked "Not acceptable—Typed instead of Handwritten."	19	All were rejected in Jan., Feb. and March before the records demand.
1963	10[5]	One of the 10 was rejected because of a conviction of grand larceny	1	
	17		43	

[1] Two white persons were not registered because of residence.
[2] One other white person was not registered because of insufficient residence.
[3] Three white persons were not registered because of insufficient residence.
[4] Two other white persons were not registered because of insufficient residence.
[5] Three other white persons were not registered because of insufficient residence

[fol. 1520] Accepted Forms Since November 18, 1960

	White Accepted	Race Not Certain	Negro Accepted
1961	185		15—all teachers
1962	352	68	4—all teachers
1963	295	165	3—one teacher

[fol. 1501]

47035	1959 Never heard results Clayton-R	Went to office of Registrar with 2 other Negroes; Clayton was leaving; he waited and clerk returned 45 minutes later; filled out form and answered some questions; Clayton said he would learn the results of the test later; never heard from Clayton.
47033	11-1959 Never told results Clayton-R	Went to office of the Registrar and filled out form; answered some questions on form about Constitution; clerk said he would hear in a few days; went to office four or five times to inquire, but each time the clerk was out and lady in office said only the clerk could give information whether he passed or failed.
47033	3-1960 Never told results Clayton-R	Went to office of the Registrar and filled out a form; lady in office said he would hear in a few days; he never received notice; returned to office four or five times to inquire, but each time the lady said applicant would have to catch the clerk in to find out whether he passed or failed.
47014	3-1960 Never told results Man	Went to office of Registrar alone; filled out form; copied and wrote an interpretation of a section of Miss. Constitution; he was told he would hear in a few days; he was never informed of results.

[fol. 1502]

47028	7-1960 Delay before learning results Man	Went to the office of Registrar and filled out form; copied and wrote interpretation of portion of Miss. Constitution; she was told she would hear results at a later date after the "board" had reviewed the test; she returned to office three times in next several months and was told the "board" had not decided yet; in Nov. 1960 clerk told her she failed test.
47014	6-2-61 Never told results Clayton-R	Went to office of Registrar alone; filled out form; copied and wrote interpretation of portion of Miss. Constitution; Clayton said he would hear in a few days; heard nothing for eight weeks; returned to office and woman said he would have to talk to the clerk personally.
47037	7-62 Delay before learning result Clayton-R	Went to office of Registrar and filled out a form; wrote an interpretation of section of Miss. Constitution; returned six months later to learn results; clerk said he could not find her form but would look for it; she returned two days later and was told her application was not accepted, but was given no reason for her rejection.
47037	12-62 Delay before learning result	Went to office of Registrar and filled out a form; wrote interpretation of Section 30 of Miss. Constitution; heard nothing for two months; returned to office, but the lady there could not find her form and told her to return two days later; was told she passed, and was allowed to register.

[fol. 1503]

47012	12-31-62 Never told results Lady	Went to office of Registrar with a friend; applicants were being received one at a time only; she filled out a form, and interpreted Section 250 of the Mississippi Constitution; had not been told results 2 months thereafter.
47008	1-63 Never told results Lady	Went to office of Registrar and filled out form; copied and interpreted portion of Miss. Constitution; he was told he would hear results; six or seven weeks later applicant still had not received word.

[fol. 1504]

Part I

C

The following Negro citizens of Marshall County were not permitted to register because their interpretations did not satisfy the registrar. The events described below occurred at the Circuit Clerk's office in Marshall County.

47011	1-1958 Rejected Clayton-R	Went alone to the Registrar's office; filled out form; had to read aloud a section of Miss. Constitution. Clerk commented that he could read well; had to copy and write an interpretation of section of Miss. Constitution; believes it dealt with state's right to take property if taxes are not paid; clerk said he would hear results in three days; never heard; stopped clerk on street two weeks later and clerk said he had not done well enough.

47029	1959 Rejected Man	Went alone to the Registrar's office; filled out application; copied and interpreted part of Constitution; clerk said he would hear results, but he received no word for a month; returned to the office and clerk said he had failed.
47034	Jan. or Feb. 1959 Rejected Man	Went to office of Registrar with brother; clerk gave them forms to fill out, which they did; copied and wrote interpretation of section from Miss. Constitution; also wrote description of good citizenship. Told by clerk that a "board" would have to rule on their applications; returned a month later; clerk said board had decided he did not pass and that applicant would have to wait six months to try again.

[fol. 1505]

47014	3-1959 Rejected Man	Went alone to the Registrar's office; filled out form; he had to interpret section of Miss. Constitution; Clerk said he would hear later because the matter had to be referred to a "board"; heard nothing for two weeks; returned to office and same clerk told him he failed because his interpretation was incorrect.
47022	Spring 1959 Rejected Clayton-R	Went alone to the Registrar's office; filled out application form; copied and wrote interpretation of portion of Miss. Constitution. Clerk said he would hear results later. Returned to office a week later and clerk said he failed the exam.

47022	Late Spring 1959 Rejected Clayton-R	Went to the Registrar's office for second try in one month's time. Filled out application form, then copied and wrote an interpretation of portion of Miss. Constitution. Clerk said he would hear results later. Returned to office a week later and clerk said he failed the exam.
47009	May or June 1961 Rejected Clayton-R	Went to the office of the Registrar and filled out a form; interpreted § 39 of Mississippi Constitution; clerk said he would let him know results; he visited office twice a week for three or four months, but the clerk was never there; finally was able to see the clerk who said he would let him know; two weeks later clerk said he failed test.

[fol. 1506]

47013	11-13-61 Rejected Lady	Went to the office of the Registrar where he filled out a form; copied and wrote interpretation of section of Miss. Constitution; about one month later, he received notice that his application was unsatisfactory.
47008	1962 Rejected Lady	Went to office of Registrar; only one person was permitted to apply at a time; waited for one white person to finish although there was a lot of room at the table; filled out form, copied and wrote an interpretation of Section 240 of the Miss. Constitution; told he would hear whether he passed or failed; a month later received letter informing him that he failed. Many months later went to office to learn why he failed. Lady who had given him application said only the clerk could tell him why he failed.

47036	June or July 1962 Rejected Lady	Went with a friend to the Registrar's office; she filled out form and copied and interpreted portion of Miss. Constitution and answered questions about duties and obligations of citizenship. More than six weeks later, she returned to office and was told that she did not pass.

[fol. 1507] Montgomery County #19

Part I

A

The following incident which occurred in Montgomery County indicates the difficulties which face a Negro who attempts to pay his poll tax in Montgomery County.

49004	Several years ago Deterred King Sheriff	Sheriff King said there'd be trouble and Harrison might be killed if he paid his poll tax. Harrison said he thought it was the law that he had to pay poll tax. King finally accepted poll tax. Harrison has never attempted to pay his poll tax since.
49000	Jan 1963 Deferred from paying Lady	Went to pay his taxes at Winona courthouse in January 1962. After paying property tax, asked clerk at desk if a person could pay his poll tax. She told him he would have to see the Sheriff. Some weeks later Mr. Townsend, the principal at the school where his daughter teaches, told him "Don't go further with it, it might affect her about getting a job."

49009	1963 Deterred	He is principal of Montgomery County Vocational School. The white County School Superintendent, Mr. Travis Abel, asked him to tell a Mr. Claude Bailey, who had tried to pay his poll tax, that if Mr. Bailey tried to pay his poll tax or to vote, that Bailey's daughter, a teacher at Mr. Townsend's school, would lose her job.
49001	1963 Deterred	Between February and April 1963, Mr. Townsend, the principal at the school where she teaches, told her he heard her father asked to pay his poll tax. He told her that if her father tried to pay it, it might cause her to lose her job.

[fol. 1508] Tippah County #21

Part I

A

The following Negro citizen was not permitted to apply to register to vote in Tippah County. This event took place at the Circuit Clerk's office in Tippah County.

70005	1959 (approx.) Not permitted to apply Registrar.	Went with Bradock Andrew to register. Registrar said that blanks had not yet arrived.

[fol. 1509] Union County #22

Part I

A

The following Negro citizen was not permitted to apply to register to vote in Union County. This event took place at the Circuit Clerk's office in Union County.

73000	About 6-1-63 Not allowed to apply Registrar	Went to courthouse with 5 or 6 other Negroes. Registrar asked name, age and whether he was qualified. He supplied this information and said he was qualified. Registrar asked if poll tax paid and he replied he was exempt. Registrar asked if he knew the Constitution and when he replied he didn't, Registrar said he wasn't qualified. Did not fill out form.

[fol. 1510] Webster County #23

Part I

A

The following Negro citizens were not permitted to pay poll taxes at the Sheriff's office in Webster County.

78005	About 1957 Refused Lady	Tried to pay poll tax. Lady in Sheriff's office said she had no orders to give him a receipt and he should wait for Sheriff. He waited, but when Negro Friend. C. Robinson couldn't pay, he left.
78004	1959 Refused Schneider (Sheriff)	Asked woman clerk to take poll tax money in Sheriff Schneider's office. She said she was instructed not to take poll tax money. Later, he was told by sheriff he could pay poll tax, but when a Negro boy took the money to the sheriff, it was refused.

78005	1959 Refused Schneider (Sheriff)	Tried to pay poll tax. Sheriff Schneider told him it wasn't time, it would be best for him to forget it and he wasn't issuing poll tax receipts.
78003	About 1959 Refused Schneider (Sheriff)	About 3-4 years ago in Walthall, he asked woman clerk in sheriff's office if he could pay poll tax. Sheriff Schneider said he'd rather he wouldn't. He left and has not tried since.
78005	1-31-63 Refused Clerk	Tried to pay poll tax at Sheriff S. R. Worsham's office an Walthall, Mississippi. Sheriff not in. Told by clerk that he had a few more days and he should come back and see the sheriff.

[fol. 1511] Attala County #26

Part I

A

The following Negro citizens of Attala County were not permitted to register to vote. The events described below occurred at the Circuit Clerk's office in Attala County.

4000	Uncertain 1955-60 Mrs. McWhorter Rejected	Went to register three times and each time she was not given an application form, though on these occasions she saw Mrs. McWhorter registering white people.
4002	1958 or 1959 Rejected Registrar	Tried to register, was asked to interpret several sections of the Constitution said she couldn't do this and was told by Registrar, "Don't tell anyone I would not let you register."

[fol. 1512] Chickasaw County #27

Part I

A

The following Negro citizens of Chickasaw County were not permitted to pay poll taxes at the Sheriff's office in Houston, Mississippi.

9001	2/63 Refused Griffin (Sheriff)	Went with Rev. Perry Montgomery, a Negro. Told Sheriff Griffin he wanted to pay his poll tax. Sheriff said he didn't know him. Told Sheriff to call Mr. Edgar Eden, a white man who could identify him. Sheriff went to phone and returned. He said Mr. Eden was not home. Refused to take payment. A Deputy Sheriff who knew Mr. Brownlee was in the office.
9002	About 11/58 Refused Wood	Went to Sheriff's office again the next day with Rev. Perry Montgomery. Told woman in office he wanted to pay poll tax. She said Sheriff was not in and refused to take payment.
9006	Before 1960 Refused Alexander	Tried to pay poll tax at Sheriff's office in Houston; asked Mr. Wood, who was collecting taxes, if he would take his poll tax. Mr. Wood refused. Sometime before 1960 while Sheriff Alexander was in office, he went to Houston to pay property tax. Saw white people paying poll tax. Asked Sheriff Alexander about paying poll tax. Sheriff Alexander said the colored people are not paying them yet.

9006	During Griffin's Term Refused Lady	Went to Sheriff's office in Houston sometime during Sheriff Griffin's term of office. Asked the secretary who was collecting taxes if he could pay poll tax. She consulted Sheriff Griffin then came back and told him she couldn't take his payment.

[fol. 1513]

9005	About 1959 Refused Sheriff	Told Sheriff he wanted to pay poll tax. Sheriff shoulted, "No, No!"
9005	1/62 Refused Sheriff	Told Sheriff he would like to pay his poll tax. Sheriff said, "I can't allow you, it will get me in bad."

B

The following Negro citizens were not registered to vote when they went to the Circuit Clerk's office in Okolona, Mississippi.

9013	1957 or 1958 Refused Johnson-R	Went to Courthouse in Okolona with two other Negroes, Rev. F. N. Bong and Oscar Kirks. Asked Registrar the qualifications for registering. He said he didn't know and couldn't give any information on it.

[fol. 1514] Clay County #29

Part I

A

The following Negro citizens of Clay County were not permitted to register because their interpretations did not satisfy the Registrar. These events occurred at the Circuit Clerk's office in Clay County.

13012	11-5-61 Delay Rejected Registrar	Went alone to Registrar's office. Sheriff came in and asked her where she was from and why she didn't vote there (Arkansas). Was given a form to complete. Had no trouble until she came to Q-12. She asked the Registrar to clarify it and he replied "Don't ask me nothing—just fill it out". She was given the Section of the Constitution dealing with the selling of state property. Upon finishing, she was told it would be graded by Tuesday. She called and was told she did not pass. Asked why. Told "For one thing you didn't get the question about the Constitution of Mississippi right".
13003	Jan. 1963 Rejected Registrar	Went up by himself. White lady came in two minutes after he arrived. Circuit Clerk was the only person working. Completed form and interpreted Section 147. Clerk said "We will run your name for 30 days and then you're supposed to get your card". Saw his name in the West Point Daily Times Leader. Went back after 30 days. He was told "They objected to the interpretation of Article 147". Clerk said he could not tell him what was wrong with the interpretation.

[fol. 1515] Lowndes County #32

Part I

A

The following Negro citizens of Lowndes County were not registered to vote because they did not interpret the Constitution to the satisfaction of the Registrar. The events described below occurred in the Circuit Clerk's office in Lowndes County.

44071	January 30, 1961 Rejected Wiggins-R	Circuit Clerk told her she had to re-register. Female assistant gave her the application form. She filled it in and was told she had not interpreted the section correctly.
44035	January, 1956 Rejected Wiggins-R	She was given a form and section 240 to interpret. She did not understand this one as well as she had the section on her first time and was told she was rejected and had not done as well this time.
44051	February 1, 1962 Rejected Man	He went to register with Mr. Claibourn. He was given the section about expost facto laws to interpret. He was told that he did not explain it right and was rejected. Some white people were registering at the same time they were.
44014	February 13, 1962 Rejected Wiggins-R	A white lady gave her the form to fill out. She was given section 16 to interpret which deals with expost facto laws and the impairment of obligations. She wrote an interpretation covering the impairment of obligations but not the expost facto part. The registrar told her she did not interpret expost facto part, that she was nervous and should go home and then come back.

3. Analysis of the Forms

(a) Selection Discrimination

An analysis of the accepted and rejected forms since November 18, 1960, indicates that the registrar used Section 1, an easy section on the separation of powers, for every applicant until some Negro students began to attempt to register during Christmas 1961. As Negroes began to attempt to register they were given Section 16 on ex post facto laws and Section 21 on habeas corpus, and after the Negroes ceased their efforts, the registrar returned to using Section 1 again until this lawsuit was filed.

I. November 18, 1960 through December 29, 1961

All 227 applicants during this period after the first accepted form received Section 1. The breakdown during this period is as follows:

	Accepted	Rejected
White	207	1
Negro	15	4

On December 29, 1961, one Negro student made two attempts to register and was rejected each time. He was given Section 1 each time. The next day two other Negroes attempted to register to vote and were given Section 16 on ex post facto laws to interpret. Neither could interpret this section satisfactorily.

[fol. 1521] II. December 30, 1961 through January 5, 1962

Date	Race	Action	Section
Dec. 30, 1961	2 Negroes	Rejected	16
Jan. 2, 1962	1 Negro	Rejected	16
	4 White	Accepted	16
Jan. 3, 1962	1 White	Accepted	16
Jan. 4, 1962	3 White	Accepted	16
Jan. 5, 1962	4 White	Accepted	16

The use of Section 16 was inaugurated with the arrival of two Negroes on December 30, 1961. As no Negroes seemed to be coming in anymore Section 1 began to be used again on January 6, 1962, until a Negro came to register on January 24, 1962.

III. January 6, 1962 through January 23, 1962

All 57 applicants received Section 1. None were Negroes.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 73

UNITED STATES, APPELLANT,

vs.

MISSISSIPPI, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

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IV. January 24, 1962 through February 22, 1962

The use of Section 16 resumed on January 24, 1962, when a Negro cab driver attempted to register. He was rejected.

Two white teachers and a white student also received Section 16 on January 24, 1962 and were registered. Thereafter until February 23, 1962, the registrar alternated between using Section 1 and Section 16 with 11 of the 15 Negroes, or 73%, getting Section 16 and only 80 of 139 whites, or 58%, getting Section 16. There are 13 whose race is not certain during this period. Seven of the 13 received Section 16. The breakdown by day is as follows:

[fol. 1522]

Date	Race	Action	Section
Jan. 24, 1962	1 Negro	Rejected	16
	3 white	Accepted	16
Jan. 25, 1962	1 Negro	Accepted	1
	7 white	Accepted	1
Jan. 26, 1962	1 white	Accepted	1
	5 white	Accepted	16
	1 Negro	Rejected	16
Jan. 27, 1962	4 white	Accepted	1
Jan. 29, 1962	1 Negro	Rejected	16
	17 white	Accepted	16
	1 race unk.	Accepted	16
Jan. 30, 1962	19 white	Accepted	16
Jan. 31, 1962	3 Negro	Rejected	1
	33 white	Accepted	1
	4 race unk.	Accepted	1
Feb. 1, 1962	2 Negro teachers	Accepted	16
	3 Negro	Rejected	16
	18 white	Accepted	16
	2 white	Rejected	16
	2 race unk.	Accepted	16
Feb. 2, 1962	4 white	Accepted	16
	1 race unk.	Accepted	16
Feb. 3, 1962	4 white	Accepted	16
	1 race unk.	Accepted	16
Feb. 5, 1962	1 white	Accepted	16
Feb. 6, 1962	1 white	Accepted	16
Feb. 7, 1962	1 race unk.	Accepted	16
Feb. 8, 1962	2 white	Accepted	16
Feb. 9, 1962	1 Negro	Rejected	16
	1 white	Accepted	16
Feb. 10, 1962	1 white	Accepted	16
Feb. 13, 1962	1 Negro	Rejected	16
Feb. 14, 1962	1 Negro	Rejected	16
	1 white	Rejected	16
Feb. 16, 1962	1 white	Accepted	1
	3 race unk.	Accepted	1
Feb. 17, 1962	1 white	Accepted	1
Feb. 19, 1962	1 Negro	Rejected	16
	1 white	Accepted	16
Feb. 22, 1962	2 white	Accepted	1

On February 23, 1962, the Registrar began the use of Section 21 on habeas corpus. On this date one Negro was rejected and two white persons were accepted. Sections 21 and 1 were used alternatively until April 3, 1962, when the Registrar returned to Section 1 as Negro efforts to register ceased.

V. February 23, 1962 through April 2, 1962

During this period *all 6* Negroes who applied to register were given Section 21 on habeas corpus and all were rejected. During this same period only 9 of 24 white [fol. 1523] persons were given Section 21; the other 15 of the 24 white persons received Section 1. There were 5 persons whose race is uncertain who received Section 1. The breakdown by day is as follows:

Date	Race	Action	Section
Feb. 23, 1962	1 Negro	Rejected	21
	2 white	Accepted	21
Feb. 26, 1962	1 white	Accepted	1
	1 race unk.	Accepted	1
March 1, 1962	3 white	Accepted	1
March 2, 1962	1 white	Accepted	1
	1 race unk.	Accepted	1
March 3, 1962	3 white	Accepted	1
March 6, 1962	2 white	Accepted	1
March 7, 1962	1 race unk.	Accepted	1
March 10, 1962	1 white	Accepted	1
March 12, 1962	1 white	Accepted	1
March 13, 1962	1 race unk.	Accepted	1
March 17, 1962	2 white	Accepted	1
	1 race unk.	Accepted	1
March 19, 1962	1 Negro	Rejected	21
March 20, 1962	2 white	Accepted	21
March 21, 1962	1 Negro	Rejected	21
March 22, 1962	1 white	Accepted	21
March 23, 1962	3 Negro	Rejected	21
March 24, 1962	1 white	Accepted	21
March 26, 1962	1 white	Accepted	21
March 27, 1962	1 white	Accepted	1
March 30, 1962	1 white	Accepted	21
April 2, 1962	1 white	Accepted	21

From April 3, 1962, until this suit was filed, the Registrar reverted to Section 1 as no Negroes were coming in to register.

VI. April 3, 1962 through August 28, 1962

There were 77 white applicants and 12 whose race is not certain. All received Section 1 and all were registered.

On August 31, 1962, the Registrar used Section 1. On September 5, 1962, he gave Section 21 to a white college student and then reverted again to Section 1 for the next 60 applicants until November 16, 1962, when he used Section 5 for the first time.

[fol. 1524] (b) Assistance

(1) Assistance on Question 19

Section 1 of the Mississippi Constitution is worded as follows:

> The powers of the government of the state of Mississippi shall be divided into three distinct departments, and each of them confided to a separate magistracy, to wit: those which are legislative to one, those which are judicial to another and those which are executive to another.

This section was given to 563 applicants registered to vote in Lowndes County from November 18, 1960-March 1963. Five-hundred and forty-six of the 563 gave substantially similar interpretations. The interpretation which appears almost verbatim on about 185 of the forms is as follows:

> The powers of the government are divided into three separate departments. The legislative makes the laws, the judicial interprets the law, the executive enforces the law.

This answer, with certain specific alternatives, appears on all but about 17 of the 563 applications of persons who received section 1. Many of the answers are not in sentence form but are merely "Legislative makes laws—judicial interprets laws—executive carries out (enforces) laws". Many of these persons were unable to correctly

spell the standard answer. The seventeen persons who [fol. 1525] did not give the standard answers are:

Name	Form #
Nabors, Patricia Louise	LO-3236
Box, Charles Edwin	LO-3238
Bond, Charles Wilson	LO-3338
Burch, Barbara Ann	LO #3327
Astin, Susan Roberta	LO# #3328
Henderson, Joseph Calvin	LO-3280
Hayslett, Emma Sue Reid	LO-3320
Furr, Dr. Ray A.	Lo-#2913
Stephenson, Virginia Ruth	LO-3335
Hughes, Howard Everett	LO #2528
Gardner, Exie K.	LO #2597
Jones, Cecil Baron Jr.	LO-3337
Christopher, Arthur Clifton	LO-3352
McDaniel, Margaret S.	LO-3359
Ford, Robert Eugene	LO-3429
Mendoza, Alfred Gilbert	LO-3446
Lollar, Robert Leon	LO-3153

146 of the 563 persons who received Section 1 and were registered to vote used an introductory clause such as "the powers of the government are divided into three separate departments."

The chart below lists the number of times particular words were used in the introductory clause:

Powers (of the Gov't.) [42]		
Gov't [42]	}	are DIVIDED [71]
Separate [10]		parts [11]
Into three	}	departments [83]
distinct [3]		branches [3]

Forty of the introductory clauses use the verb "to be", instead of the passive voice illustrated above. While the responses using the verb "to be" almost all used the words displayed in the sentence above, they did not follow [fol. 1526] as closely to a particular form. The most common form, "the three departments of the government are . . .", occurred ten times.

Five-hundred and forty-six of the 563 gave as their interpretation of Section 1 an explanation of the functions of each of the 3 branches of government and 400 of 546 did not explain the section in terms of separation of powers. Including in this 546 are the 146 who also used a standard introductory clause such as "the powers of the government are divided into three separate departments".

An analysis of the explanations of the functions indicates that the 546 gave a standard interpretation.

In describing the functions of the legislature 469 of the 546 used the word "make" in some form of the expression "makes the laws".

In describing the functions of the judiciary, 391 of the 564 used the word "interprets" in some form of the expression "interpret the laws."

In describing the functions of the executive 277 of the 564 used the word "enforce" in some form of the expression "enforces the laws." Another 197 used "carries out" or "administers" the laws. A third group of "44" used the word "executes" in some form of the expression "executes the laws".

[fol. 1527] Section 16

Section 16 is worded in the following way: "Ex post facto laws, or laws impairing the obligation of contracts, shall not be passed."

There were 102 registrants who were asked to interpret Section 16 of the Mississippi Constitution. Of these, fourteen registration forms (13 white, one unknown) have the following general form—"No law can be passed which would void any contract which is in effect." Eighteen interpretations of Section 16 (15 white, 3 unknown) have the following general form: "No law shall be passed that would void a contract which is already in force." The distinguishing features of these two standard types of responses are their respective endings, "in effect" and "in force." Registrar L H B signed eight of the "in force" registration forms and only one of the "in effect" forms.

In addition, there were nine registrants (8 white, one unknown), who included the words "impair" and "void" in their interpretations of Section 16. Six of these were signed by registrar T. E. Wiggins although he signed less than 1/3 of the total forms requiring an interpretation of Section 16.

Section 21

"The privilege of the writ of habeas corpus shall not be suspended unless when in the case of rebellion or invasion, the public safety may require it, nor even without the authority of the legislature."

The interpretations of this section follow a definite pattern. Of the total fifteen (13 white, 2 unidentified) responses, ten (all white) specifically mention the right of a [fol. 1528] hearing, which does not appear in the actual wording of the section. In eight of these ten responses "hearing" is followed by the words "on the legality of," or a substitute phrase containing some form of the word legal and meaning the same thing, such as "hearing on whether he is being legally held."

Of the five respondents who did not follow the above form, four were students, the other a member of the Air Force, indicating that perhaps they did not need help in interpreting Section 21.

Section 5

Section 5 of the Mississippi Constitution reads as follows:

> All political power is vested in, and derived from, the people, all government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.

Two things are striking about the interpretations to section 5; a standard approach and the use of a particular phraseology. The standard approach is indicated by the fact that 90 (57 white, 32 unidentified, one Negro) of the 127 interpretations of section 5 mention the idea of people being represented in government. Of these, 71 specifically use the word "elect."

The striking phraseology was based on the expression "government of the people, by the people, and for the people." Forty-five respondents used some form of this phrase. Twenty-six abbreviated the expression to two parts as, for example, government by and for the people. Nineteen (13 white, 6 unidentified), however, used the entire expression.

[fol. 1529] Section 14

Section 14 of the Mississippi Constitution is worded as follows:

> No person shall be deprived of life, liberty, or property except by due process of law.

The interpretations of Section 14 again offer a striking example of standard approach and similar phraseology. The standard approach is indicated by the emphasis on "trial" as demonstrated by the fact that the noun "trial" or the verb "to try" is used in 162 interpretations. The word "court," or in a few cases a synonym, is used in 24 additional responses, leaving only 24 responses which are not specifically in terms of judicial process.

The recurring use of particular expressions is also striking. A chart of these expressions and the number of times they occurred, broken down as far as possible by race, is given below:

32—Trial by jury (16 white, 16 unidentified)
20—Court of law (17 white, 3 unidentified)
12—Trial by law (9 white, 3 unidentified)
15—Fair trial in/by/of court (10 white, 5 unidentified)
6—Fair trial by law (3 white, 3 unidentified)
17—Trial in/of/by court (10 white, 7 unidentified)
8—Day in Court (7 white, 1 unidentified)
10—Combinations of above (8 white, 2 unidentified)

Section 22

"No person's life or liberty shall be twice placed in jeopardy for the same offense; but there must be an actual acquittal or conviction on the merits to bar another prosecution."

Registrants were asked to interpret this section of the Constitution on two days, 1-17-63 and 1-31-63. There were 33 forms requiring an interpretation on 1-31-63 and 11 on 1-17-63. Of the 33 forms from 1-31-63, ten followed a defi- [fol. 1530] nite pattern. This pattern, in turn, can be divided into two parts—"no person can be tried for the same crime twice if . . . and no person can be convicted of the same crime twice." Three of the ten standards answers

followed this first form, and seven the second. All responses which followed this general form were made on the same day, 1-31-63.

In addition, there were two cases (involving four registrants) in which husband and wife made responses to question 17 which were very nearly identifical.

Certain instances of the concentrated use of a specific phraseology on a specific day make the use of these expressions appear even less accidental. For example, there were five interpretations given to section 14 on 2-8-63. Two of these were fair trial-court and two were trial-court. Thus, four of the five responses on a particular day made use of the same or a very similar expression.

A similar example of the concentrated use of a certain phraseology is the use of "trial by law" in interpretations to section 14. This expression was used twelve times. Its use on two days, 1-26-63 and 1-29-63 accounts for nine of these times. Out of the total 238 times which section 14 was interpreted, fourteen interpretations were made on 1-26-63 and thirty-one on 1-29-63.

[fol. 1531] (2) Assistance on Question 20

Question 20 requires registrants to set forth their understanding of the duties and obligations of citizenship under a constitutional form of government. Responses to Question 20 followed the pattern of 19. Certain duties were constantly mentioned. For example the idea of voting was mentioned, quite naturally, in most responses. But it was usually mentioned in a very particular way. Such expressions as qualify to vote, register to vote, vote in all elections, vote for the candidate best qualified, and exercise the privilege to vote occurred very often. Also, the constant use of the word "qualify" in the expression qualify to vote, vote for the best qualified, and qualify to take part was very striking. Other expressions, such as government of the people, for the people, and by the people, keep up with current events, study and understand your form of government, occurred frequently.

There was also a standard approach to expressing the idea of obeying the laws and supporting the government. The words maintain, protect, support, uphold, obey, abide

by occurred constantly in combination with the words law, constitution and government.

[fol. 1532] The following is a summary of standard responses to Question 20:

Recurring expressions used in answering Question 20 (includes responses including more than one such expression)

I Qualify—Vote (Total 118 white; 35 race unknown;)

A. Qualify to vote (70w; 11un;)
B. Qualify and vote (6w; 1un;)
C. Qualify—self to/and vote (21w; 13un;)
D. Qualified voter or qualified to vote (8w; 1un;)
E. Special Identicals including "qualify to vote" (4w; 12un;)
F. Very Similar (9w; 7un;)

II Qualify—take part (Total 25 white; 4 race unknown;)

A. Qualify—self to/and take part/participate (14w; 3un;)
B. Qualify to/and take part/participate (11w; 1un;)

III Elect Best Qualified (Total 64 white; 22 race unknown;)

A. Vote for / Support / Elect —Candidate best qualified / best qualified candidate (24w; 5un;)
B. Elect / Support / Vote for —People/person best qualified / best qualified people/person —(17w; 9un;)
C. Vote for one / individual / people / man / nominees —best / most —qualified (10w; 3un;)
D. Similar (13w; 5un;)

IV Elect Qualified (Total 9 white; 5 race unknown;)

A. Elect
B. Vote for —qualified person / officials —(9w; 5un;)

[fol. 1533] V Current Events (Total 57 white; 8 race unknown;)

A. Keep up with Current Events (43w; 7un;)
on
B. Keep Informed as to—Current Events (14w;)
of

VI Government of the people, by the people, and for the people (Total 18 white; 1 race unknown; 1 Negro;)

VII Special Identicals

Read and study understand —Const. Govt. laws (Total 9 white; 1 race unknown)

9 of these responses were signed by assistant registrar LHB, who only signed about one-tenth of the total registration forms. Also, 9 of these responses were dated between 1-20-62 and 1-31-62.

[fol. 1534] Evidence of assistance in filling out registration forms is demonstrated by pairs of nearly identical responses occurring in the same day. These responses can be differentiated from the standard responses by the degree of uniqueness which accompanies their similarity. Of the ten pairs of responses below, eight appear to be husband and wife combinations. These pairs of nearly identical answers are arranged below chronologically for question 19.

Section 1

Name, date and race	Q. 19
(1) Velma Corinne E. Edwards 1-18-61 White	legislature—they make the laws. Judicial—they interpret the law. executive—He inforses the law Q. 20 Qualify to vote and suport the candidate best qualified. To obey the law and keep advised of current affairs.
Frances R. S. Sanders 1-18-61 White	Q. 19 The legislative department makes the laws, The judicial department interoupts the meaning of the law and the executive departments enforce the law. Q. 20 Qualify to vote and support the best candidate best qualified. To obey the law and keep informed of the current events.

(2) Girtie M. E. Sennett
1-28-61
White

Q. 19
Legislature Makes the Laws
Judicial—Interpret the laws
Executive—Inforses the law.
Q. 20
To uphold the government
To Obey the laws.
Qualify to Vote.

[fol. 1535]

Name, date and race
Vallie D. Sennett
1-28-61
White

Q. 19
Legislative Makes the Laws
Judicial Interperpret the Laws
Executive Inforce the Law.
Q. 20
uphold the Government
Obey the Law.
Qualafy to Vote

(3) Roscoe Hickey
1-31-62
White

Q. 19
Legislative — Makes our Laws
Judicial Interpret the Laws
Executive Carries out the Laws
Q. 20
Upholds the Laws, Voting—
Suppot government & to keep informed on current events.

Mrs. Walterine W. Hickey
1-31-62
White

Q. 19
Legislative Makes our laws.
Judicial—Interpret the laws
Executive—Carries out the laws.
Q. 20
Upholds the laws, voting.
To support the government and keep informed on current events.

(4) Wylodine Hill Neyman
11-13-62
White

Q. 19
The legislative department makes the laws. The judicial interpets the laws. The executive inforces the law.

Q. 20
Should obey the law & qualify to vote. Should take an active part in our government, and study and understand our government.

Mattie Sue Hill Brown
11-13-62
White

Q. 19
The legislative department makes laws. The judicial interpert the laws. The executive inforces the laws.

Q. 20
Should qualify to vote. Should obey the laws study & understand our government. Should take an active part in our government.

[fol. 1536] Section 16

Name, date and race
(5) Emmit T. Chunn
1-29-62

Q. 19
A Law Shall not Be passed that would void a contract allready in forece.

Q. 20
qualify to vote. go to the polls and vote. take Part in the Gov. try to understand the Gov. and take Part to do what I Beleave is right

Margaret Mae R. Chunn
1-29-62
White

Q. 19
A law shall Not be passed that would void a contract enforce.

Q. 20
qualify to vote go to the polls and Vote take part in the Gov. try to Understand the Gov. & take part to do what I beleve is Right.

Section 14

(6) Elebert Lee Atkins
1-19-63
White

Q. 19
No person can be sentenced or sent to prison except by the court of low.

Q. 20
To up holed the low & to support aur govenment to the best af aur ability and to help protect it from all em emies and elect good officers.

Vena Stoekman Atkins
1-19-63
White

Q. 19
No person can be sentenced or sent to prison except by the court of low.

Q. 20
To uphold the low & to support our government to the best of our ability and to help protect it from all ememies.

[fol. 1537] Section 14

Name, date and race	
(7) Laura Bell D. Pennington 1-30-63 White	Q. 19 This entitles me to a fair trial. Q. 20 I think we should obey the law, & let ourselves be governed by such—Vote for the best qualified person for office
Lecil Gray Pennington 1-30-63 White	Q. 19 This entitles Me to a fair trail. Q. 20 Obey the law and let ourselfs be governed by such—and elect the best qulified people to carry out these laws—

Section 30

(8) Clovis Edward Bishop 3-31-62 White	Q. 19 A person can not be put in prison for a debt a person can go to prison forway he makakes a debt is unlawful. Q. 20 We shall obay the Law We should support this kind of gov. Help elect good officers.
Martha Ann B. Bishop 3-31-62 White	Q. 19 A person can not be put in imprisonment for owing a debt. A person can be put in prison for making debt under false pretense.— Q. 20 We should obay the law we should protect this form of govt. help elect good officers

Section 22

(9) Mary Elaine Millican
Ward
1-31-63
White

Q. 19

If a Person is convicted or acquitted of a pecific crime he cannot be prosecuted a second time for the same offense.

Q. 20

Pay your poll tax register to Vote take a part in all political affairs obey thelaws uphold the rights of the constitution.

[fol. 1538] Section 22

Name, date and race
Jarvis B. Ward

Q. 19

That a person is conviction or acquitte in a crime he cannot be prosecuted again for the same thing.

Q. 20

The right to Vote Pay your Pole Tax obey the Laws Take a part in all Political affairs up hold the rights of the Constitutional of the Government.

Section 5

(10) A. C. Gilliland
1-21-63
White

Q. 19

All Political Powers in vested in by the People and for the People for all People.

Q. 20

To register & vote & to put people who we think are bettr for our offices. To support the constitution. & all laws that are sent down & to obay all orders.

Evelyn P. Gilliland
1-21-63
White

Q. 19

All political power is by the people for the people. an of the people.

Q. 20

To register an vote, and vote people in office, who are better suited for office. To support the constitutin that are set down & to obey all orders.

[fol. 1539] Part III

The following 14 Negro applicants were denied registration on the basis of their interpretations of the sections of the Constitution which were assigned to them, or on the basis of their statements of the duties and obligations of citizenship.

Nina L. Carter
#7
1-7-56
Maid

Interpreted
Sec. 1

Q. 19

The powers of the government of the state of Mississippi are devided as following. Legislative, judicial and executive to one another.

Q. 20

I understand that a legislative form is laws made by the legislature to determine what is best for our state and judicial, executive to each and every citizen to express his own opinion of whom his thinks is best to perform those duties.

Carter, Willie J.
#34
1-12-56
Labor

Interpreted
Sec. 30

Q. 19
Constitution probit any inprinsoment for dubts.
Q. 20.
To be a good farther to love god. Therefore i believe my duty to my country to love, its and its constitution. To honor its flag to defend it agaist all emenies.

Carter, Nina L
#35
1-14-56
Maid

Interpreted
Sec. 30

Q. 19
A person cannot be put in prison for debts which he has not paid. such as not sufficient funds in bank to cover checks as a guardian of a minor or be responsible for debts of money which he holds for others etc.
Q. 20
It is the duty of every citizen to love its State, support its constitution, obey it laws, respect its flag and defend it against all enemies and do all within his or her power to help in any way they can to enforce these laws.

[fol. 1540]

Murray, Vernice M.
#69
1-24-56
Teacher

Interpreted
Sec. 1

Q. 19
Legislative a body of law makers Executive the head, a Governor. Judicial enforce the laws, and Supreme Cours.
Q. 20
Obey the laws Respect and defend the flag . . . abide by and obey the Constitution of Mississippi and the Constitution of the United States.

Johnson, Archie Lee W.
#110
1-30-56
Teaching

Interpreted
Sec. 240

Q. 19

All elections by the people shall by by ballot in oder that the votes May be counted easy, and it will give the voter a chance to vote for whom he wants to vote for.

Q. 20

My understanding of citizenship is a person that has lived in the state for life on a long period of years and abided by all law of the state of Mississippi.

Kimbrough, Mamie
#541
1-30-57
Housewife

Interpreted
Sec. 240

Q. 19

As I understand elections by ballot is all the people of a certain precinct go to a designated place and cast a vote for a particular person whom they feel like can best serve the people.

Q. 20

As I understand a Citizen is one who first of all Must be resident of the U. S. A. Should believe in the Constitution of the United States, and of the state in which he live. Should do all in his power to obey the laws of the land and the state in which he lives. He should do all in his power to help promote the general welfare of the people and his community. Take an active part in public affairs both civic and religious.

Kimbrough, Dell
#559
1-31-57
Barber

Interpreted
Sec. 123

[fol. 1541]

Q. 19

Since he (the governor) is the head officer of the legislature (where the laws are made) and since he take a sworn oath that he will see to it that the laws are faithfully obobed it is his duty to see that they are properly executed.

Q. 20

I understand the obligations of citizenship to be a responsibility place on every person, such as; his duty in promoting aiding and sponsering any civil movement or enterprise that will make his community of nation better.

Wheadon, Augusta A.
#1826
7-3-59
Housewife

Interpreted
Sec. 1

Q. 19

Interpretation. The three distinct departments of State are 1. The governor is the chief magistrate. 2. The state legislature makes the laws. It is made of the state senator and state representative from the counties of the state. They meet and make the bills which become laws whem properly voted on. The representative represent the people. The judicial department made up of the attorney General, Judges and lawyers intepret the laws.

Q. 20

Each citizen should be law abiding and help to uphold and protect the law, he should be loyal to the government.

Payton, Otis D.
#2951
1-29-62
Teacher

Interpreted
Sec. 16

Q. 19

To me this means that laws allowing persons to brake a contract or not live up to the obligations of a contract shall not be passed.

Q. 20

To me the duties and obligations of citizenship under a constitutional form of government is that each citizen is responsible for his share of the obligations of the government.

Carter, Nina L.
#3102
2-14-62
Housewife

Interpreted
Sec. 16

Tha the local or state government shall not pass a law to change an agreement entered into by two or more persons.
Ex Post Facto law means a law that was made provious and can not be changed but can be acted upon. That you can not make a new law.

[fol. 1542]

Q. 20

To listen, try to understand an abide by the laws Made by our government.

Carter, Nina L.
#3114
2-19-62
Housewife

Interpreted
Sec. 16

Q. 19

The local or state governments shall not pass laws that will change legal agreements previously entered into by two or more people.

Ex post facto is a law governing an agreement it will not change but act upon an agreement already made. The law will not make a new law to change.

Q. 20

The duties of a citizen is to learn, try to understnad and obey the laws of our governments.

Brown, Linward Lee
#3167
3-23-62
Student

Interpreted
Sec. 21

Q. 19

The citizen of a speedy trial by jury shall no be carrie away unless and extreme emergency nor withouth the approval of the state congress.

Q. 20

Each citizen under the form of government should be handle in the same form that of the person have been live in the United State all of his life.

Stalling, Eulice
#3168
3-23-62
Cab D.

Interpreted
Sec. 21

Q. 19
Every citizen shall be entitled to a quick trial by jury unless there are great pressures on the government from within or from without, nor ever without to the approval of the House and Senate.

Q. 20
Your duties as a citizen is to vote and keep laws & regist & pay poll tax I am obligations keep all laws and to.

[fol. 1543]

Q. 20
I think my duty as being a citizen would be to live by the law. and do what the law say do and to try to keep my state one of the best states in the nation as well as my town in which I live.

Taylor, Vester, Jr.
LO #3169
3-23-62
Taxi Driver

Interpreted
Sec. 21

Q. 19
The right to speedy trial by jury shall not be denied unless in case of extreme emergency nor without the approval of the state congress.

[fol. 1544] Oktibbeha #34

Part I

A

The following Negro citizens of Oktibbeha County were not permitted to register to vote. The events described below occurred at the Circuit Clerk's office in Oktibbeha County.

53016	About middle of 1955 Refused Henry-R	Went with wife to registrar's office to register. The registrar told him he had no application forms. He said he sent away for them but they didn't come.
53016	About middle of 1955 Refused Henry-R	Went to Registrar's office in Starkville with wife. This was 2 or 3 weeks after first attempt. Registrar again said he had no application forms.
53017	About 1955 Refused Henry-R	Went with husband to Registrar's office in Starkville to register. Told by Registrar that he had no application forms. Not allowed to register.
53008	1958 or 1959 Rejected Henry-R	Went with wife to Circuit Clerk's office. Told woman working in office he wanted to register. She said he would have to wait for the Clerk who was out. When Clerk came back he gave him a form to be filled out. When he had finished the Clerk said he didn't interpret section of Constitution, "to a point of law." Asked Clerk when he could come back. The Clerk said, "I don't give a damn if you never come back."

53000	1958 or 1959 (Spring) Not told Henry-R	Went to Registrar's office alone. Mr. Henry and a white woman were working in the office. Read from a book with law in it. Had to come back 2 weeks later and face a Board of five people. Board said they had to see if he qualified as a good citizen. He was never notified of action taken.
53006	1959 Refused Mrs. Henry-Dep. Clk.	Went with wife to Registrar's office. Asked Mrs. Henry if he could register. She said, "See Mr. Henry, he walked down the street."

[fol. 1545] Oktibbeha #34

Part I

A

53006	1959, Summer Refused Mrs. Henry-Dep. Clk.	Went to Registrar's office to attempt to register. Mrs. Henry was in the office and told him he'd have to see Mr. Henry who was out but would be back soon. Waited for a few minutes and then left.
53006	1959 Refused Mrs. Henry-Dep. Clk.	He and his wife went to registrar's office to try to register. Mrs. Henry was in the office and said they must see Mr. Henry who was out.
53018	1959 or 1960 Refused Henry-R	Went to Registrar's office in Starkville. Asked Registrar, Mr. Henry, if he could register. Mr. Henry refused to let him fill out an application.
53011	1960 Refused Henry-R	Registered since 1952 or 1953. Went to Circuit Clerk to see if he could have his registration status clarified so he could again vote in Osborn precinct where he lived. Mr. Henry said he would have to wait two years to vote in Osborn precinct.

53012	1960 Not told Henry-R	Was registered in Mississippi since 1952 or 1953. Decided to apply again from Osborn precinct where she lived because she was told her name no longer on list of registered voters from Osborn precinct. Required to interpret a section of Mississippi Constitution. She wasn't told whether she passed or failed.
53011	1960 Rejected Henry-R	Already registered since 1952 or 1953; this was known to Registrar, Mr. Henry. Filled out an application form so he could vote from Osborn precinct where he lived. Asked to interpret section of the Constitution. He was rejected.
53019	1960 Rejected Henry-R	Went alone to Registrar's office to have his Beat changed. Registrar said his original registration was illegal. Had to fill out written application. Had to read a section of the Constitution dealing with due process of law. Then asked to write it from memory and interpret it. Copied date of application from old calendar. Registar rejected application, saying, "It's wrong to start with."

[fol. 1546] Claiborne Co. #39

Part I

A

The following Negro citizens of Claiborne County were not permitted to apply to register to vote or were delayed in their attempts to register to vote. The events described below occurred in the Circuit Clerk's office in Claiborne County.

11014	About 1956 Refused Mrs. Hackett- Dep. R.	Mrs. Hackett told her she had no application forms.
11014	Mid-Late 1950s Refused Mrs. Hackett- Dep. R.	Mrs. Hackett told her that she had no application forms.
11014	Feb. 24, 1959 Delayed, Rejected Mrs. Hackett- Dep. R.	Mrs. Johnson commenced filling out an application form. She had gotten about halfway when Mrs. Hackett said she was going to take her dinner hour then and that Mrs. Johnson would have to start over when she came back.
11000	Feb. 24, 1959 Refused Mrs. Hackett- Dep. R.	He went to the Circuit Clerk's office to re-register along with another Negro. Mr. Bailey had been registered to vote in Claiborne County prior to Jan. 1, 1954. Mrs. Hackett told him she didn't have time and that he would have to come back.
11006	Early 1959 Refused Mrs. Hackett- Dep. R.	Mrs. Hackett told him she didn't have time then and asked him to come back later.

11020	About 1959 Refused Mrs. Hackett- Dep. R.	The woman in the office told him that the one who gave out application forms was out and that he would have to come back.
11005	Probably Feb. 1, 1962 Refused Mrs. Easley-R	Collins entered the Circuit Clerk's office to attempt registration. Mrs. Easley was alone in the office, but stated that she was very busy and that Collins would have to come back some other time.

[fol. 1547]

11038	About March 19, 1962 Refused Mrs. Easley-R	He went to the Circuit Clerk's office with Alexander Collins and Walter Griffin, both Negroes, to make application for registration. Mrs. Easley refused to take more than one applicant at a time. He was the third to go in. It was just after 3 p.m., but Defendant Easley refused to let him apply, saying that she didn't have time for him, that she had to get some coffee, and that he could come back tomorrow.
11005	Probably Mar. 19, 1962 Delayed Rejected Mrs. Easley-R	He went together with Walter Lee Griffin and Tommie Williams, both Negroes, to the Circuit Clerk's office to attempt registration. Defendant Easley refused to permit them to apply at the same time. Griffin and Williams were required to wait outside while Collins filled out a form and interpreted a section of the Mississippi Constitution. However, Mrs. Easley refused to register him.

11005	Mar 19, 1962 Delayed Rejected Mrs. Easley-R	After completing one application form and being rejected by Mrs. Easley, Collins asked if he could try again then. Mrs. Easley refused to permit him to fill out another application form, saying that she had to get coffee. It was 3:00 P.M.
11012	Mid-March, 1962 Delayed Rejected Mrs. Easley-R	He, Alexander Collins and Tommie Williams, Negroes, went to Circuit Clerk's office together to attempt registration. Mrs. Easley refused to permit them to make application at the same time. Griffin and Williams waited outside for about an hour while Collins filled out his form. Then Griffin went in. He commenced filling out a form and interpreting Section 197, but had to leave to start work before being able to complete his form.

[fol. 1548]

11005	April 2, 1962 Refused Mrs. Easley-R	Collins went to the Circuit Clerk's office to attempt registration. Mrs. Easley was alone in the office. She said that he had just been there last week and that she was too busy to have him apply.
11014	April 9, 1962 Refused Mrs. Easley-R	Defendant Easley refused to permit Thelma Crowder, Annie Holloway Johnson, and Estelle Collins Johnson, all Negroes, to make applications for registration at the same time. When Mrs. Estelle Johnson came out of the office after completing her application form and being rejected by Defendant Easley, Mrs. Annie Johnson went in. However, Easley refused to permit her to attempt registration, saying she had to go to dinner. It was about 11 A.M.

11007	April 9, 1962 Delayed Mrs. Easley-R	Defendant Easley refused to permit her, Annie Johnson and Estelle Johnson, all Negroes, to make applications at the same time that morning. That afternoon, Mrs. Crowder filled out an application form, interpreting Section 165 of the Mississippi Constitution, but Mrs. Easley refused to register her. Her application form was not furnished to plaintiff when records were photographed.
11016	April 9, 1963 Delayed Rejected Mrs. Easley-R	She, Mrs. Annie Johnson and Mrs. Thelma Crowder, all Negroes, went to the Circuit Clerk's office to attempt registration. Mrs. Easley refused to let more than one apply at a time. Mrs. Estelle Johnson went first, filled out a form and interpreted Section 236 of the Constitution. When she finished, Mrs. Easley looked at it and told her she did good but missed a few things.

[fol. 1549] B

The following Negro citizens of Claiborne County were not permitted to re-register to vote by the use of the interpretation test. The events described below occurred at the Circuit Clerk's office in Claiborne County.

11017	1958 Hacket- Dep. R. Rejected	He and about four other Negroes went to the Circuit Clerk's office to attempt re-registration. He knew the answers to some questions in the application form but not to others and returned the form to Mrs. Hackett.

11024	About 1958 Mrs. Hackett- Dep. R. Rejected	He and several other Negroes went to the Circuit Clerk's office to attempt re-registration. He filled out an application form, but was not re-registered.
11026	About 1958 Hackett- Dep. R. Rejected	He went to the Circuit Clerk's office to re-register. He had previously registered in Claiborne County on March 1, 1952. Mrs. Hackett gave him an application form to fill out. Mr. Owens did not attempt to fill it out because he knew that another Negro, Daniel Newman, had filled out an application form and that Mrs. Hackett had not registered him.
11026	2/19/59 Woman Rejected	He went to the Circuit Clerk's office alone to re-register. He previously had registered in Claiborne County on March 1, 1952. The woman in the office asked him if he could explain the Constitution to her. He said he could not, and she told him there was no need to give him an application form and she refused to register him.
11000	June or July 1960 Woman Rejected	The woman in the office asked him if he knew the Constitution. Mr. Bailey, who had been registered in the county prior to Jan. 1, 1954, said he did not. She then said he would have to go study a little more before registering.
11025	Feb. 1962 Woman Rejected	Went with two other Negroes to register. Woman said he would have to put the Constitution on one side and interpret it on the other. He did not attempt it.

[fol. 1550] C

The following Negro citizens of Claiborne County filled out application forms but were not permitted to register to vote. These forms have been destroyed. The events described below occurred in the Circuit Clerk's office in Claiborne County.

11014	Mid to late 1950s Hackett-Dep. R. Rejected	Mrs. Johnson filled out an application form and interpreted a section of the Mississippi Constitution, but Mrs. Hackett refused to register her.
11014	Mid to late 1950s Hackett-Dep. R. Rejected	Mrs. Johnson filled out an application form and interpreted a section of the Mississippi Constitution, but Mrs. Hackett refused to register her.
11014	2/24/59 Hackett-Dep. R. Rejected	Mrs. Johnson filled out an application form and interpreted a section of the Mississippi Constitution, but Mrs. Hackett refused to register her.
11017	About 1959 Hackett-Dep. R. Rejected	He filled out an application form, but Mrs. Hackett refused to register him. Mr. Johnson asked Mrs. Hackett what was wrong with the form, but Mrs. Hackett would not tell him.
11006	Fall 1959 Headley-R Rejected	Mr. Headley asked him why he wanted to register and for whom he planned to vote. Then he gave Mr. Cornish an application form. Mr. Cornish was unable to complete the form.
11012	4/2/62 Easley-R Rejected	He filled out an application form, interpreting Section 211 of the Mississippi Constitution, but the Defendant Easley refused to register him. His application form was not furnished to plaintiff when records were photographed.

[fol. 1551] D

The following Negro citizens of Claiborne County were not permitted to register to vote because their application forms did not satisfy the registrar. The events described below occurred at the Circuit Clerk's office in Claiborne County.

11005	1961 Easley-R Rejected	Defendant Easley required that he interpret the section of the Mississippi Constitution she had assigned him without referring back to the text of the section. She then refused to register him, saying one or two little things were wrong with his form. On one occasion Collins asked what the things were that were wrong with his form. Defendant Easley refused to tell him.
11005	Probably March 26, 1962 Easley-R Rejected	Collins filled out an application form, interpreting a section of the Mississippi Constitution, but Defendant Easley refused to register him, saying he had gotten it all except for one or two little things.
11013	3/29/62 Easley-R Rejected	He filled out an application form, interpreting Section 165 of the Constitution, but Defendant Easley refused to register him, saying he did a good job with the exception of several errors.

11016	4/3/62 Easley-R Rejected	She filled out an application form, interpreting Section 72 of the Constitution. While interpreting the section, Mrs. Johnson turned the form over to refer back to the text of the section. Defendant Easley told her that was not permitted. When Mrs. Johnson completed her form, Mrs. Easley said she had missed a few little things and she had turned over the form. Defendant Easley refused to tell her what was wrong with her form.

[fol. 1552] Claiborne County #39

Part II

Application Forms

1. & 2. Number of Application Forms and Period Covered

Period includes forms from June 29, 1962 to March 12, 1963.

White	
Accepted	35
Rejected	0
Pending	18
Negro	
Accepted	0
Rejected	0
Pending	1

On April 10, 1961, Mrs. Easley was advised that the government was conducting an investigation into registration practices in Claiborne County.

Exactly one year later, on April 10, 1962, Mrs. Easley was asked about her records by an attorney of the Department of Justice, but refused to show him any application forms.

On November 23, 1962, Mrs. Easley was personally served with a letter requesting that she make available voter registration records in her possession, for inspection and copying, pursuant to Title III of the Civil Rights Act of 1960.

Upon Mrs. Easley's refusal to make available the requested records, the Government, on December 12, 1962,

filed an Application for Order to Require the production of Records for copying and inspection.

Claiborne County voter registration records were photographed on March 14, 1963 pursuant to an Order of this Court obtained under Rule 34 FRCP.

[fol. 1553] No application forms filled out by applicants prior to June 29, 1962 were made available to the Government under this Court's Order, for photographing.

3. Analysis of Forms

a. Selection of Constitutional Sections

Section	Number of Applicants Passed	Pending
36	1	1
209		1
158		1
153		1
135	1	1
110		1
104		1
102	1	1
101	1	1
93		1
91		1
73		2
54		1
24	1	1
23	1	1
14		1
17		1
52	1	
20	2	
46	2	
47	3	
66	1	
71	1	
73	1	
75	1	
77	1	
78	1	
83	1	
99	1	
109	1	
154	1	
157	1	
161	1	
166	1	
190	1	
192	1	
195	1	
201	1	
205	1	
217	1	
243	1	
250	1	
264	1	

[fol. 1554] **b. Assistance to White Applicants**

(1) Assistance on answers to Question 20

(a) Of the 33 accepted applicants, the following groups answered Question 20 with similar language:

Group I—These applicants used the phrase "help enact the laws" or its equivalent.

Name	Date of Application	Answer to Q. 20
Frishman, Aaron H.	8-6-62	To obey the laws of the State and the Nation and exercise your right to vote to help inact the laws.
Stephens, Edward R.	8-11-62	Obey all the Laws, Vote, and help enact all laws.
Davenport, Martha Betty	8-25-62	Obey all the laws and take part in the elections to help enact all the laws.
Hynum, Don Kenneth	10-1-62	To obey the State and National laws at all times, and use your right to vote to help enact the laws.
Turnage, Mrs. Carolyn Ann	1-31-63	My duties as a citizen are to abide by the laws of the State an nation, also qualify myself to vote to help inact the laws.

Group II—These accepted applicants used the words "State and Nation" in their answers.

Name	Date of Application	Answer to Q. 20
Davenport, Howard C.	8-7-62	Obey all of the State and National Laws.
Ivey, Robert Leon	8-11-62	To obey the laws of the state and the Nation, and exercise your right to vote.
Cupit, Bobbie Jean	9-21-62	To obey all State, County & National laws.
Roberts, Edd	10-13-62	Obey the laws of the State and the Nation take part in all county State and National Elections.
[fol. 1555]		
Fife, Helen T.	10-22-62	Obey the laws of the State and Nation and take part in all county, State and National elections.
Hines, Patricia Ann	1-26-63	Obey the laws of the State & the Nation. By the right to vote to help obey the laws.
Warren, Charles Robert	1-28-63	Use your right to vote and obey all the laws of the United States and Nation.
Warren, Maria S.	1-29-63	Obey the laws of the state and the nation and take interest in all State, national and County elections.

b. Of the 18 applicants whose applications were pending at the time of photographing the following wrote answers to Question 20 substantially similar to those of the applicants listed above in Group II, in that each used the phrase "State and Nation".

Name	Date of Application	Answer to Q. 20
Sanders, James D.	8-13-62	Obey the laws of the State and the Nation.
Carter, Milton Grover	1-31-63	To be a loyal citizen of the State and Nation to obey the laws and uphold them. To take part in church affiers and other. Orzation of the State and Nation.
Howard, Katie Merle	3-4-63	Obey all the laws of the state, and the Nation. Take part in civic a affairs and organizations of the state. and County.
Campbell, Douglas Elwood	3-12-63	to obey the laws of the state and of the Nation. take part, in my community & government affairs.

[fol. 1556]

Part III

The following Negro citizens of Claiborne County were denied registration by Section 244 of the Mississippi Constitution:

(a) Alexander Collins (11005) (1961) and Estelle Collins Johnson (11016) (April 3, 1962) were not permitted to look at the text of the section of the Constitution assigned to them while they were interpreting it.

(b) Four Negro citizens, who applied unsuccessfully to Defendant Easley for voter registration a total of six times in the Spring of 1962, recalled the sections of the Mississippi Constitution which she assigned to them. All were assigned lengthy and involved sections, none of which were assigned to white persons between June 29, 1962, and March 14, 1963, the period for which Defendant Easley preserved application forms which the Government has photographed. (See pages 39-7 and 39-8.) None of the forms made out by these Negro citizens has been preserved by Defendant Easley.

(1) Elverette J. Jennings (11013) (March 29, 1962) and Thelma Crowder (11007) (April 9, 1962) both received Section 165:

> No judge of any court shall preside on the trial of any cause, where the parties or either of them, shall be connected with him by affinity or consanguinity, or where he may be interested in the same, except by [fol. 1557] the consent of the judge and of the parties. Whenever any judge of the Supreme Court or the judge or chancellor of any district in this state shall, for any reason, be unable or disqualified to preside at any term of court, or in any case where the attorneys engaged therein shall not agree upon a member of the bar to preside in his place, the governor may commission another, or others, of law knowledge, to preside at such term or during such disability or disqualification in the place of the judge or judges so disqualified.

(2) Walter Lee Griffin (11012) received Section 197 in mid-March 1962 and Section 211 on April 2, 1962:

> [197] The legislature shall not grant to any foreign corporation or association a license to build, operate, or lease any railroad in this state; but in all cases where a railroad is to be built or operated, and the same shall be partly in this state and partly in another state or in other states, the owners or projectors thereof shall first become incorporated under the laws of this state; nor shall any foreign corporation or association lease or operate any railroad in this state, or purchase the same or any interest therein. Consolidation of any railroad lines and corporations in this state with others shall be allowed only where the consolidated company shall become a domestic corporation of this state. No general or special law shall ever be passed for the benefit of any foreign corporation operating a railroad under an existing license from this state, or under an existing lease; and no grant of any right or privilege, and no exemption from any burden, shall be made to any such foreign corporation except upon the condition that the owners, or stockholders

thereof shall first organize a corporation in this state under the laws thereof and shall thereafter operate and manage the same, and the business thereof, under said domestic charter.

[fol. 1558] [211] The Legislature shall enact such laws as may be necessary to ascertain the true condition of the title to the Sixteenth Section lands in this state, or lands granted in lieu thereof, in the Choctaw Purchase, and shall provide that the Sixteenth Section lands reserved for the support of township schools shall not be sold nor shall they be leased for a longer term than ten years for lands situated outside municipalities and for lands situated within municipalities for a longer term than 99 years, for a gross sum; provided further that existing leases of the Sixteenth Section lands situated in the municipalities of the state may, for a gross sum, be extended for a term of years not exceeding 99 years from the date of such extension, but the Legislature may provide for the lease of any of said lands for a term not exceeding twenty-five years for a ground rental, payable annually, and in the case of uncleared lands may lease them for such short terms as may be deemed proper in consideration of the improvement thereof, with right thereafter to lease for a term or to hold on payment of ground rent; provided, however that land granted in lieu of Sixteenth Section Lands in this state and situated outside of the county holding or owning same, may be sold and the proceeds for such sale may be invested in a manner to be prescribed by the Legislature.

(3) Estelle Collins Johnson (11016) received Section 72 on April 3, 1962, and Section 236 on April 9, 1962:

[72] Every bill which shall pass both houses shall be presented to the governor of the state. If he approves, he shall sign it; but if he does not approve, he shall return it, with his objections, to the house in which it originated, which shall enter the objections at large upon its journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which, likewise, it shall

be reconsidered; and if approved by two-thirds of that [fol. 1559] house, it shall become a law; but in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within five days (Sundays excepted) after it has been presented to him, it shall become a law in like manner as if he had signed it, unless the legislature, by adjournment, prevented its return, in which case it shall be a law unless sent back within three days after the beginning of the next session of the legislature. No bill shall be approved when the legislature is not in session.

[236] The legislature shall impose for levee purposes, in addition to the levee taxes heretofore levied or authorized by law, a uniform tax of not less than two nor more than five cents an acre per annum upon every acre of land now or hereafter embraced within the limits of either or both of said levee districts. The taxes so derived shall be paid into the treasury of the levee board of the district in which the land charged with the same is situated; and the legislature, by the act imposing said tax, shall authorize said levee boards to fix the annual rate of taxation per acre within the limits aforesaid, and thereby require said levee boards, whenever a reduction is made by them in their other taxes, to make a proportionate reduction in the acreage tax hereinbefore mentioned; but said acreage tax shall not be reduced below two cents an acre per annum; and all reductions in such taxation shall be uniform in each of said districts; but the rate of taxation need not be the same in both of them; and such specific taxes shall be assessed on the same assessment roll, and collected under the same penalties, as ad valorem taxes for levee purposes, and shall be paid at the same time with the latter. And no levee board shall ever be permitted to buy lands when sold for taxes; but the state shall have a prior lien for taxes due thereto. The legislature may provide for the discontinuance of the tax on cotton, but not in such manner as to affect outstanding bonds based on it, and on the discontinuance of the tax on cotton, shall impose

another tax in lieu thereof; but the legislature may repeal the acreage tax required to be levied hereby after the first day of January, A.D. 1895.

[fol. 1560] The number in parentheses following each Negro applicant is the number assigned him because of his having been interviewed by the Department of Justice.

[fol. 1561] Issaquena County #40

Part I

A

The following difficulties were encountered by Negro citizens of Issaquenna County when they attempted to pay their poll tax. The events described below occurred at the Sheriff's office in Issaquena County.

24009	2/1957 Lady Not allowed to pay	While he was in the sheriff's office to pay his property tax, he asked the clerk about paying the poll tax. She told him that she had received no instructions from the sheriff (Johnson) about receiving poll tax from colored people. He then left, without paying the tax.
24005	1/1958 Lady Not allowed to pay	When he went to the sheriff's office to pay his property tax he asked the woman if he could pay his poll tax. The sheriff was not in the office and was not found by Hall. He tried to contact him two other times but couldn't find him in the office.
24005	1/31/58 Johnson-Sheriff Deterred	Saw Sheriff Johnson and asked him if he could pay his poll tax. The sheriff asked him why he wanted to pay the tax, and Hall told him that it was because he was a U.S. citizen and since they accepted his property tax they should accept his poll tax. So the Sheriff took him into the office and directed Marie Gore to accept the tax, which she did.

24009	2/1959 Lady Not allowed to pay	Woman in the sheriff's office told him that she had no instructions from the sheriff (Johnson) about receiving poll tax from colored people. So he left without paying the tax.
24003	1/1959 Lady Not allowed to pay	When in the sheriff's office to pay his property tax he asked the woman clerk if he could pay his poll tax. She told him that he would have to see the sheriff who was not in the office at that time. He left and did not return that year.
24003	1/1960 Lady Not allowed to pay	When he was in the sheriff's office to pay his property tax he asked the woman clerk if he could pay his poll tax; she told him that he would have to see the sheriff. Since the sheriff was not in his office he left. He returned a few days later, but the same clerk told him that the sheriff was not in then either. So he again left.

[fol. 1562]

24005	1/1960 Gore- Clerk Deterred	When he was in the sheriff's office to pay his property tax he asked if he could pay his poll tax. She told him that he would have to see the sheriff. He returned to the office on Jan. 27, with Willie Duffin. The woman in the office called the sheriff and he came over to the office with deputy Davis. The sheriff told them to come to the old office, which is in the jail. There, the sheriff told them about a new road which was planned for their neighborhood, but said that it wouldn't be built if they attempted to pay the tax. But the sheriff said that if they wanted to do things the hard way that they could go ahead and pay the tax. They both then went back to the office and paid the tax.
24003	Approx. 1/30/60 Newman- Sheriff Deterred	Accompanied by Clarence Hall, Jr., he went to the sheriff's office to see about paying the poll tax. An unidentified woman in the office called the sheriff who soon came into the office with the Deputy Sheriff Davis. The sheriff asked them what they wanted. When they told him that they had come about paying the poll tax, he told them to come into the jail and talk about it. They did and the sheriff told them that the people in the county would be mad at them for paying the tax and, moreover, that the road which runs past their homes would probably not get the needed repairs. But when they insisted on paying the tax, the sheriff took them back to the office and told the woman to let them pay the tax.

24009	2/1960 Lady Not allowed to pay	When he was in the sheriff's office to pay his property tax, he asked the female clerk about paying his poll tax. She told him, "You've got three more days yet." This he took to mean that he was too early to pay his tax.

[fol. 1563]

24003	1/1961 Lady Not allowed to pay	When he was in the sheriff's office to pay his property tax, he asked the woman if he could pay his poll tax. She told him that he would have to see the sheriff. He went back later, but the sheriff still was not there. The woman told him that the sheriff was sick. He told the woman that he had paid the tax the year before, but the woman insisted that he would have to see the sheriff.
24005	1961 Deterred	He has not attempted to pay the poll tax since Jan. 1960, because he thought that if he did not attempt to pay the tax in 1961 that the county might build a new road in his district. When he saw the sheriff the year before concerning paying the tax, the sheriff had told him that if he did pay the tax the county wouldn't build a planned road in his district.

[fol. 1564] Warren Co. #43

Part I

A

The following Negro citizens of Warren County were not permitted to apply to register or were delayed in their attempts to register to vote. The events described below occurred at the Circuit Clerk's office in Warren County.

75013	August, 1961 Not allowed to apply Mrs. Alford-DC	Went to the registrars office to apply to register. Deputy clerk would not allow her to fill out a form; told her to go home and study.
75011	8/10/61 Delayed Rejected Mrs. Alford DC	Filled out application form and was told she would have to produce a birth certificate before being registered.
75019	10/12/61 — Mrs. Alford DC	Went to registration office with Anita Parrot, upon completion of form, they were told to come back in a week as deputy clerk was too busy to grade them. Subsequently, informed that they were rejected.
75002	9/6/62 Not allowed to apply Mrs. Alford DC	She went to registrar's office and was told to come back in a week and was not given a chance to fill out a form.

B

The following Negro citizens of Warren County were rejected because they did not interpret the Constitution to the satisfaction of the clerk who waited on them. The events described below occurred at the Circuit Clerk's Office in Warren County.

75022	6/30/61 Rejected —	Went to registrar's office with her husband; was given a form and section *b* of the Constitution to copy and interpret; completed the form and handed to clerk; clerk told her she had failed because she had recopied section word for word.

[fol. 1565]

75014	8/10/61 Rejected Mrs. Alford -DC	Went to registrar's office with Mr. E. G. Davenport; after completing form he was told that it didn't make sense.
75013	8/15/61 Rejected Mrs. Alford -DC	Went to the registrar's office with Mrs. Wilson and was given Section 46 to copy and interpret; was told that it didn't make sense.
75002	9/5/62 Rejected Mrs. Alford -DC	Went to registrar's office alone; was given application form and card with Section 111 of Constitution to copy and interpret; completed form and was told that it was not satisfactory; asked to fill out another; clerk told her that she didn't have time and that she was tired of "you people coming up in truckloads all day long" and told applicant to come back in a week.
75002	9/14/62 Rejected Mrs. Alford -DC	Went to registrar's office alone; was given an application form a Section of the constitution; filled out form and was again told that she had failed and not to return for another week.

75007	10/19/62 Rejected Miss Ebeling -DC	Went to the registration office with Mr. Taylor; was given Section 5 to write and interpret; after completing form deputy clerk told her to come back in a month and that her form would be graded and published in the interim; form marked "Rejected No. 19—incorrect."

C

The following Negro citizen was rejected because of spelling errors.

75013	8/10/61 Rejected Mrs. Piazza -DC	Went to registration office with a Mrs. Annie Mae Wilson; was given Section 10 to interpret; stood at counter and filled out form and was told she had failed because there were too many spelling mistakes. She filled out three forms on this day and was rejected on all three.

[fol. 1566]

D

The following Negro citizen of Warren County was not permitted to re-register to vote. This event occurred at the Circuit Clerk's office in Warren County.

75015	2/30/61 Rejected Mrs. Alford -DC	Was first registered in Warren County on January 30, 1950 under maiden name of Mamie Rogers (1st Ward; 2nd Election District, page 8 #3060) After being married she went to the registrar's office to have name changed on the books; Deputy Clerk said she couldn't find her name and told her she had to fill out a form, then rejected her application.

[fol. 1567] Warren #43

Part II

Application Forms

1. Number of Forms

On August 13, 1962, the United States made a demand for inspection of voting records on Mr. J. Noel Nutt, Circuit Clerk and Registrar of Warren County. On August 14, 1962, Mr. Nutt refused to make the records available to the Attorney General without a court order. An application for an order requiring production of voting records was filed in the District Court of the Southern District of Mississippi on August 30, 1962, and an order was issued on November 30, 1962. The records were inspected and photographed on January 7-11, 1963.

The earliest form photographed is dated April 11, 1955; the most recent form photographed is dated January 10, 1963. Of these, there are 2,823 white, 277 Negro and 44 racially unidentified accepted forms. There are also 5 "incomplete" white forms, passed but requiring a signature.

In addition, there are 39 white, 207 Negro, and 54 racially unidentified rejected forms. There are also 32 forms rejected because of prior registration.

The names of 46 applicants with forms covering a period from December 21, 1962, to January 10, 1963, were being [fol. 1568] published or were to be published at the time of photographing and the forms had not been acted upon at that time. The following table lists the totals, but forms which are unidentified as to race are not included:

White	
Accepted	2,828
Rejected	39
Negro	
Accepted	277
Rejected	207

2. Periods Forms Cover

(a) Total Period April 1955-November 1962

Race identification of accepted applicants was made from the registrar's card file. These cards were up to date through approximately November 1962. As a result, the analysis of forms covers the period from April 1955 through November 1962. The present registrar, Mr. J. Noel Nutt, took office on January 3, 1962.

(b) Period: January 1961-January 1962

This period is the year preceding the assumption of office by the present registrar, Mr. Nutt. During this year the former registrar, Mr. Foley was ill; he died in November. After his death Mrs. Helen Alford, who was Mr. Foley's chief deputy clerk, was appointed to fill the vacancy until a special election could be held.

(c) Period: January 1, 1962 through November 1962

This period begins at the time Mr. Nutt assumed office [fol. 1569] until November 1962, which date is the last date for which race of applicants has been identified.

3. Analysis of Forms

(a) Selection of Sections of the Constitution

(1) April 1955-January 1, 1961

From April 1955 to January 1961 the percentage of Negro applicants receiving relatively complicated sections of the Mississippi Constitution to copy and interpret was consistently higher than the percentage of white applicants receiving such sections. During this period, 93% of the white applicants received section 11 to copy and interpret; 67% of the Negro applicants received this section; 22% of the Negro applicants received sections of greater complexity than section 11 (11% of the Negro application forms did not have a section of the Constitution copied thereon). In 1958, after the Civil Rights Act of 1957 was

passed, 85% of the white applicants received section 11. 30% of the Negroes applying were given this section.

Distribution of all sections by race

April 1955—January 1, 1961

Section	White	Negro	% White	% Negro
11	1746	189	93	67
6	30	5	1.6	1.8
5	84	57	4.5	20.2
2	1	—		
16	1	—		
unk.	14	31	.9	11
Total	1876	282	100.	100.

[fol. 1589-A] Distribution of Section 11 by race and year

April 1955—January 1, 1961

			Total		%	
Year	White	Negro	White	Negro	White	Negro
1955	320	10	352	11	91	83.5
1956	338	32	341	36	99	89
1957	335	44	338	50	99.5	88
1958	339	18	399	60	85	29.8
1959	458	38	479	47	95.5	81
1960	295	37	307	69	96.1	53.6

(2) Period: January 1961 to January 1962

Approximately 85% of the white applicants received section 11 of the Constitution to copy and interpret. 26% of the Negroes applying were given this section. 64% of the Negroes were given sections of greater complexity than section 11. 21% of all Negroes applying were given one of the following relatively complicated and lengthy sections: section 10 concerning treason against the state; section 21 concerning suspension of the writ of habeas corpus; section 46 regarding alteration of compensation of members of the legislature; and section 111 having to do with the sale of land in pursuance of a court decree or execution. No white applicants were given any of these sections to copy and interpret during this period. In addition, approximately 20% of the Negroes applying were required to copy and interpret section 6 concerning the regulation of the internal government and alteration of the Constitution of the state, a relatively complex and involved section, while only 1% of the whites were given this section.

[fol. 1570] Distribution of Sections by race: 1961

Section	White	Negro	% White	% Negro
	12	3	3.8	3.7
6	3	22	.9	19.5
7	—	1	—	.9
10	—	7	—	6.2
11	274	29	86.0	25.6
13	—	1	—	.9
14	20	4	6.3	3.5
16	1	—	.3	—
21	—	5	—	4.4
22	1	3	.3	2.6
24	—	2	—	1.8
25	2	2	.6	1.8
29	2	—	.6	—
31	1	3	.3	2.7
32	1	7	.3	6.2
46	—	6	—	5.3
111	—	6	—	5.3
unk.	2	12	.6	10.6
Total	319	113	100.	100.

(3) January 1, 1962—November 1962

From January 1962 to November 1962, approximately 36% of the white applicants were given section 11; 18% of the Negroes applying were given this section to copy and interpret. In addition, 28% of the white applicants were given section 14 to copy and interpret. 3% of the Negroes applying were given this section. 18% of the Negroes applying were given either section 6 (concerning the regulation of the internal government and alteration of the constitution of the state), section 24 (concerning the administration of Justice for injury done without sale or delay), of section 46 (regarding alteration of compensation of members of the legislature)—all more complicated or [fol. 1571] difficult than section 11 or 14. Less than 2% of the whites applying were given any of these sections.

Distribution of sections by race for 1962

Section	White	Negro	% White	% Negro
5	58	23	22.0	38.4
6	2	5	.8	8.4
7	3	—	1.2	—
10	4	1	1.5	1.6
11	95	11	36.4	18.4
12	7	2	2.7	3.3
14	74	2	28.4	3.3
24	2	3	.8	5.0
25	2	—	.8	—
26	1	—	.4	—
29	2	—	.8	—
32	9	2	3.4	3.2
46	—	3	—	5.0
111	2	1	.8	1.6
unk.	—	7	—	11.7
Total	261	60	100.	100.

(b) Assistance

(1) April 1955 to January 1, 1961

In the nine-month period from May 1955 through January 1956, immediately succeeding the implementation of section 244 of the Mississippi Constitution, 90 white applicants and 5 Negro applicants had "to be Governed by the law of the State of Mississippi and federal government" or language substantially identical thereto, as an interpretation of section 11.

From January 1, 1956, to January 1, 1961, 457 white and 10 Negro applicants had substantially identical interpre-

tations of section 11 and subsequently identical answers to [fol. 1572] Question 20. These include two sets of similar answers to Question 19; all 457 had a single similar answer to Question 20. These are:

Q. 19—1. "The people shall at any time have the right to petition the government on any subject."

2. "The people have the right to petition the government on any subject."

Q. 20 1. "To vote and obey the laws."

In addition, 63 white applicants and no Negro applicants had answers to Questions 19 and 20 substantially similar to the above. During this period, approximately 25% of the whites and 6% of the Negroes given section 11 to copy and interpret had substantially identical or substantially similar answers to Questions 19 and 20.

Distribution of Standard Answers

By Race and Year

"The people shall at any time have the right to petition the government on any subject."

	Unknown	1956	1957	1958	1959	1960	Total
White	11	133	111	41	70	7	373
Negro	1	1	3	1	1		7

"The people have the right to petition the government on any subject."

White	1	6	77				84
Negro			2	1			3

(2) January 1, 1961 to January 1, 1962

During this period 24 white and no Negro applicants had substantially verbatim interpretations of Questions 19 and 20 as follows:

[fol. 1573] 11 white registrants wrote;

#19—"The people shall at any time have the right to petition the government on any subject."

#20—"To vote and obey the laws."

13 white registrants wrote;

#19—"The people have the right to petition the government as long as they do it peaceably."

#20—"To vote and uphold all laws."

(3) January 1, 1962 to November 1962

During this period 9 white and no Negro applicants had substantially verbatim interpretations of section 14 and substantially identical statements in response to Question 20 as follows:

Group A

Name and Date	Question 19	Question 20
Smithhart, Catherine (Mrs. Vernon) 1-15-62	Except by due process of law no person shall be deprived of life, liberty, or peoperty.	To vote and up hold all laws.
Sirianos, Fotini G. 1-17-62	Except by due process of law no person shall be deprived of life liberty and happiness.	To obey all laws.
Williams, Betty Jane 1-22-62	Except by due process of law, no person shall be deprive of life liberty or property.	To vote.

[fol. 1574]

Boone, Daniel H. 1-24-62	Except by due process of law no person shall be deprived for life liberty or property.	Uphold all Laws and Vote.
Hudson, Mrs. Faye S. 1-29-62	Except by due process of law, no person shall be deprived of life, liberty or property.	To uphold all laws, and vote.
Carlson, Melvin M. 1-29-62	Except by due process of law, no person shall be deprived of life, liberty or property.	Uphold all laws.
Passons, Thomas P. 2-5-62	Except by due process of Law no person shall be deprived of life, liberty, or property.	upon hold all Laws.

Group B

Name and Date	Question 19	Question 20
Vaughan, James A. 3-26-62	No person can be convicted of any crime, property life, or liberty without having benefit of a trial as directed by law.	A citizen should be expected to abide by the laws of the state and federal goverament to assure that the laws will be upheld.
Vaughan, Mary E. 3-26-62	No person, can be convicted of any crime, property, life or liberty without having benefit of a trial as directed by laws.	A citizen should be expected to abide the laws of the state and federal government to assure that the law will be uphold.

[fol. 1575] The following white applicants had verbatim interpretations of section 11 and verbatim statements in response to Question 20 as follows:

Name and Date	Question 19	Question 20
Wood, Richard D. 1-30-62	That the government shall Not interfere with my right and obligation as a Citizen.	It is My duties as a Citizen to help select and support and government official of our Country and their to obey the laws wish we help make.
Wood, Mary E. H. 1-30-62	That the government shall not interfere with my rights and obligations as a citizen.	It is my duty as a citizen to help select and support the government officials of our Country and then to obey the laws which we help make.

(c) Grading

(1) Period: April 1955 to January 1961

The following comparison of Negro rejected and white accepted applications during this period illustrates the arbitrary grading of the application form.

Negro	White
(a) Section 11: The right of the people peaceably to assemble and petition the government on any subject shall never be impaired.	
Lincoln, L. J. 1-31-56 #19. Any one o bay the Law will be heard by the government. Omission on form Question 12	Rodgers, Mary J. 1-16-56 #19. to obey all rules.
	Weatherford, Julian 1-31-56 #19. The right to vote. Omission on form Question 12.
[fol. 1576]	
Johnson, Frank L. 5-21-57 #19. It means you are free to vote for anybody you want to and you will never be harmed. Omission on Form: Question 12	Baker, Christopher C. 7-1-57 #19. Allways be a law biding citizen amn on country allways try mantan the best policy carry out and keep constitution of the U.S. at all times. Omission on Form: Question 12
Neal, Willie B. 10-30-58 #19. As a citizen of Mississippi we has a right to be heard rigits of creed orl color by peaceably assembling. Error or omission on Forms: Q. 14. unanswered; Q. 15. answered "no"; Sec. 11 was recopied and interpreted in the space provided for the interpretation.	Koestler, Thelma R. 2-19-58 #19. The people of the United States will always be free to vote according tc their own convictions and this government is for the people. Omission on Form: Q. 14. unanswered.
	Regan, John B. 8-21-58 #19. The right of all americans people of United States of america to Vote & obey the Law of the State.

[fol. 1577] (b) Section 5: All political power is vested in, and derived from, the people; all government of right originates with people, is founded upon their will only, and is instituted solely for the good of the whole.

Ross, Christine J.
2-7-58

#19. A constitution of Mississippi means that person must be qualified, and to form a constitution there must be more than one person, It take an organization so that they must come to an agrement all government rights originated with the people so there must be coroporation. The power invested in the people makes it possibly for us to have good facilities and good schools for our children and it originates for our government and from the rights that each person who show forth.

Omission on Form:

No signature.

Cockrell, Elbert R.
1-31-58

#19. People right to petition the Government.

Thornton, Harry G.
1-30-58

#19. Everyone is subject to a higher power, and I believe that this is of sound doctrine.

Smith, Sady B.
1-30-58

#19. For Justice and rights.

[fol. 1578] (2) Period: January 1, 1961 to January 1, 1962

The following comparison of Negro rejected and white accepted application forms illustrates the arbitrary grading of forms during this period. All of the white applicants listed below were given section 11 concerning the right to assemble and petition the government to copy and interpret. The Negro applicants listed below were given sections 6, 10, 46, and 111.

Negro	White
(a) Section 111: All lands comprising a single tract sold in pursuance of decree of court, or execution, shall be first offered in subdivisions not exceeding one hundred and sixty acres, or one-quarter section, and then offered as an entirety, and the price bid for the latter shall control only when it shall exceed the aggregate of the bids for the same in subdivisions as aforesaid; but the chancery court, in cases before it, may decree otherwise if deemed advisable to do so.	Section 11: The right of the people peaceably to assemble and petition the government on any subject shall never be impaired.
Brown, Elizabeth A. 9-5-61	Wells, Frances P. 12-14-61
#19 If deemed advisable to do so the Chancery court may decree all lands comprising a single tract sold in pursuance of decree of court, or execution, shall be first offered in subdivisions not exceeding one hundred and sixty acres, or one-quarter section and then offered as an entirety, and the price bid for the latter control only when it shall exceed the aggregate of the bids for the same in subdivisions.	#19 It is the right, for the people to select and elect the Citizens to help run the government.

[fol. 1579]

Negro	White
(b) Section 46. The members of the legislature shall severally receive from the state treasury compensation for their services, to be prescribed by law, which may be increased or diminished; but no alteration of such compensation of members shall take effect during the session at which it is made.	Section 11. The right of the people peaceably to assemble and petition the government on any subject shall never be impaired.
Brown, Elizabeth A. 9-14-61	Ivy, Susan H. 5-3-61
# 19 The members of the legislature shall severally receive from the state treasury compensation or pension for their services, to be prescribed by law, which may be more or less, but not changes of such compensation of members shall take effect during the time at which it is made.	# 19 The state of Mississippi shall have the right to govern the state as it best sees fit for the good of the people.
O'Neal, Bessie M. 8-23-61	Hardin, Harl, Sr. 2-6-61
# 19 they can not increase or take away as long as legislature is going on will wait until the next session to add or take away.	# 19 The Right of peopel as you wood Like to Be Doned By an Be in a Fair World.
(C) Section 10. Treason against the state shall consist only in levying war against the same, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.	Section 11. The right of the people peaceable to assemble and petition the government on any subject shall never be impaired.
O'Neal, Bessie M. 8-10-61	Wood, Lois C. 2-16-61
# 19 Treason mean you cannot be charged with any thig unless they have to witnesses that have the some thig against you in court treason olso mean you should not betreay your on state in which you live nor cause any confusion.	# 19 As far as our Goverment they do the right thange for the people on any thange that Might Come up.

[fol. 1580]

(d) Section 6: The people of this state have the inherent, sole, and exclusive right to regulate the internal government and police thereof, and to alter and abolish their constitution and form of government whenever they deem it necessary to their safety and happiness; Provided, Such change be not repugnant to the constitution of the United States.

Section 11: The right of the people peaceably to assemble and petition the government on any subject shall never be impaired.

Williams, Shirley L. J.
6-30-61

#19 It is the right of the people as citizens to regulate the government and police thereof and to change or do away with the constitution or any part thereof. Whenever they find it necessary to protect their safety and happiness provided, such a change does not fight the constitution of the United States.

Blansett, Bennie F.
1-30-61

#19 Everyone should abide by the Constitution of our Miss Government.

[fol. 1581] (3) Period—January 1, 1962 to November 1962

The following comparison of Negro rejected and white accepted application forms illustrates the arbitrary grading of the interpretation test and of the duties and obligations test during this period. The following Negro applicants failed for an "improper answer to No. 19 & 20", were given Section 5 concerning the investiture and derivation of political power in and from the people. Their forms are compared with those of accepted white applicants who were also given Section 5 to copy and interpret.

Negro

Betty P. Williams
11-1-62

#19: All government of right originates with the people.
#20: To oby the laws.

Charity Casom
8-22-62

White

Ralph L. Hamblett
3-19-62

#19: Made for the people of the world.
#20: To obey the laws and to vote.

Frances H. Nielsen
1-26-62

Negro	White
#19: This mean that the people have political power, and that the government of their right are originated with the people upon their on will. #20: The duties of one is to obdy the law and rule of the sta te and to be up standing citizen of Mississippi.	#19: That I will do what I think is best for My & will not be bribed by anyone #20: To work & pull togeather for the best in every thing.
Minnie Murray 8-24-Blank	Jesse Lee Monk 1-29-62
#19: It seem to me all of government worke together are orginize with the peoples, in order to make life easy for each indivual or citizen. #20: first I say to be duilfut to obay laws of my stale To kee it cleaning an religious.	#19: freedom #20: abide by the low. Vote.

[fol. 1582] The following Negro application also interpreting Section 5 was failed because Questions numbered 13, 15 and 16 were incomplete and Question 19 was answered improperly. It is compared with an accepted white applicant who had Questions 13, 14, 15, 16, and 17 incomplete.

Negro	White
Mary D. Bolls 10-22-62	Charley P. Sims 4-30-62
#19: All the power of our state and country is under the leadership of our law and Government at the state of Mississippi which should be obey at all times.	#19: All people have the same Right

The following application of a Negro given Section 46 (alteration of compensation of members of the legislature) failed because of Question 19 and 20. It is compared with application forms of accepted whites given Section 11 (right to assemble and petition the government) and Section 14 (right to due process of law). No white applicants were given Section 46 to copy and interpret during this period.

Negro

James T. Smith
1-24-62

#19: That prescribed by law may be increased or diminished. No alteration of such compensation of members should take effect during session at times which their are made.
#20: I understand the duties and obligations of citizenship under a constitutional government.

[fol. 1583]

White

Fletcher E. Harper
2-1-62

#19: To Abide the Laws of the State, an have Resept for all State official.

#20: Privilage provided For Freedom of Speech an helping to Make it a better State to Live in.

Edith S. Harper
2-1-62

#19: To abide by our Law of the state and be Good to your fellow man.
#20: Privilege Provide By ou Laws are help you goverment an fellow man in ay way that you may be called up on.

Laurence C. Nielsen, Jr.
4-2-62
#19: the right to choose
#20: Freedom

[fol. 1584] Part III

The following Negro applicants were denied registration because of the requirements of section 244 of the Mississippi Constitution. Except as noted the precise grounds of denial are unknown.

Name	Address	Date of Application
Donerson, Dorothy L.	1807 Baldwin Ferry Rd.	11-26-62
Williams, Betty P.[1]	Waltersville	11-1-62
Palmer, Amelia B.[3,4]	Rt. 4 Box 28	11-1-62
Bolls, Mary D.[2,4]	Bovina	10-22-62
Meeks, Rosie L.[2]	Bovina	9-21-62
Murray, Minnie[1]	808 No. Magnolia	8-24-62
Casom, Charity[1]	912 No. Magnolia St.	8-22-62
Montgomery, Mary L.	903 Buck St.	8-16-62
Green, Mrs. Ivory L.	1876 Jackson Rd.	5-10-62
Green, Christine W.	1001 E. Chestnut St.	8-21-62
Smith, James T.[1]	1710 Baldwin Ferry Rd.	1-24-62
Howard, Isabell W.	3124 Confederate Ave.	10-23-61
Thomas, Westine	2513 Confederate Ave.	10-12-61
Caldwell, Susie	2613 Alma St.	9-27-61
Brown, Elizabeth A.	First Ward	9-14-61
Brown, Elizabeth A.	First Ward	9-5-61
Meeks, James H.	Bovina	8-29-61
O'Neal, Bessie M.	5, Box 253	8-24-61
O'Neal, Bessie M.	5, Box 253	8-23-61
[fol. 1585]		
O'Neal, Bessie M.	5, Box 253	8-22-61
O'Neal, Bessie M.	5, Box 253	8-15-61
O'Neal, Bessie M.	5, Box 253	8-10-61
O'Neal, Bessie M.	5, Box 253	8-10-61
Eavenport, Egration	1009 Vine St.	8-10-61
Wilson, Mrs. Annie M.	Rt. 5, Box 127	8-10-61
Carter, Mary M.	3117 Hall's Ferry Rd.	8-7-61
Williams, Shirley L. J.	2714 Drummond St.	6-30-61
Wallace, Ruthie L.	2632 Carpl (?)	6-20-61
Reed, Mamie W.	703 Monroe St.	2-30-61
Phelps, Mrs. Marie	2302½ E. Same St.	2-3-61
Walker, Joe Evelyn	Rt. 5 Box 2512	2-3-61
Watson, Sarah B.	Unknown	8-30-60
Peterson, Mabel	2505 Hannah Ave.	2-1-60
Wilson, Ruby L.	Rt. 5 Box 133	1-22-60
Murray, Minnie B. H.	808 No. Magnolia	2-17-59
Neal, Willie B.	5 Ward	10-30-58
Ross, Christine J.	1321 Fayette St.	2-7-58
Bingham, Margaret A.	1003 Avenue C.	7-31-57
Johnson, Frank L.	Rt. 4, Box 178	5-21-57
Lincoln, L. J.	1523 Marcus	1-31-56
Murray, Minnie B.	808 No. Magnolia	date unknown

[1] Denied registration on the basis of their interpretation of Mississippi Constitution and on the basis of their statement of the duties and obligations of a citizen.

[2] Denied registration on the basis of their interpretation of the Mississippi Constitution.

[3] Denied registration on the basis of their statement of the duties and obligations of a citizen.

[4] Denied registration on the basis of errors or omissions on the forms.

[fol. 1586] Wilkinson County #44

Part I

A

The following Negro citizens of Wilkinson County were not permitted to apply to register to vote until after their names were published in the paper. These events occurred at the Circuit Clerk's office in Wilkinson County.

79000	4/1/63 Rejected Whitaker-R	Went to the office of the Circuit Clerk and told Mr. Whitaker she wanted to register; he said he would have to publish her name in the newspaper for two weeks; after that period she was permitted to fill out an application, but was rejected for wrong interpretation.
79001	4/23/63 Accepted Whitaker-R	Went into the office of the Circuit Clerk to register and signed in book, after which her name was published in the newspaper for two weeks; she then returned to office and was permitted to fill out a form; she received no notification of whether she had passed or failed, but went again later to the office and was permitted to sign the registration book.

[fol. 1587] Yazoo County #45

Part I

A

The following Negro citizens of Yazoo County were deterred in their attempts to remain registered to vote in Yazoo County. The events described below occurred in the Circuit Clerk's office in Yazoo County.

No. 82000 Date: About 1951 Deterred	About three weeks after registering, he was told by several white men, not officials, to have his name removed from voter list. He did so. He was then rehired at a job he had been fired from when he registered.

No. 82010 Date: About 1954 Deterred	He attempted to vote in an election in 1954 at Benton, Miss. He was threatened at the poll by a white man and did not vote. That night and the following day, five white men came to his house and told him he shouldn't have tried to vote and for him to have his name removed from the voting list. One white man removed a leased gas tank from his property.
No. 82006 Date: Fall, 1954 & 1955 Deterred	Paid poll tax through 1954 and voted once sometime between 1952-54. Asked by white employer in Fall of 1954 to remove name from voter list. Told by two Negroes in 1955 to remove name or wouldn't be able to sell or gin cotton. He and his wife had names removed.
No. 82003 Date: Fall 1954 Spring, 1955 Deterred	Voted once and paid poll tax until 1954. Knows that a white man in Fall of 1954 told her husband to have his name removed. In Spring of 1955, two Negroes told her and husband to remove their names or they wouldn't get credit or cotton ginned. They had names removed.
No. 82027 Date: Spring, 1955 Deterred	In the Spring of 1955, a man who identified himself as a member of the Citizens Council, asked her to remove her name from the voting list in her best interests, He said most Negroes were unqualified and only registered because of insistence of NAACP. She did so. She is now afraid to get involved in any voting activity as she fears she will lose her job as a school teacher.

[fol. 1588]

No. 82023 Date: Spring, 1955 Deterred	Told by a white merchant in Spring of 1955 it would be best if he removed his name from list, else people would get mad at him. He did.
No. 82025 Date: June, 1955 Deterred	About June, 1955, a Negro told her an important white man wanted her to remove her name from list of voters. She did so. She had registered without any tests or questions of any kind.
No. 82024 Date: June, 1955 Deterred	Was visited in about June, 1955 by two Negroes whe told him that a white man wanted him to have his name removed from the voters list. If he didn't, he wouldn't get credit or his cotton ginned. Two weeks later he went to Yazoo City and had the circuit clerk remove his name. Registered merely by paying poll tax and signing name.
No. 82021 Date: June, 1955 Deterred	Had circuit clerk remove her name on 6/21/55. No one had told her to do this but did so because of fear she would lose credit. After removal, a white merchant asked her to have her name removed.
No. 82015 Date: June, 1955 Deterred	Never attempted to vote. About June, 1955, two Negroes told her that a white man wanted her to have her name removed from voters list. She complied.

No. 82033 Date: About June, 1955 Deterred	In about June, 1955, she heard that some Negroes removed their names from the voters list in order to have their cotton ginned. She then went to Yazoo City and had her name removed. No one had told her to do this. When she registered in 1953, she was only asked if she was born in U.S.
No. 82028 Date: 1955 Deterred	He was asked in 1955 by a white man who had been helping him financially for years to remove his name from the voting list. He understood the financial help would stop if he didn't. He was told by another white man that something might happen to Negroes who did not remove their names. He had his name removed and has not tried to register or vote since. He attempted to vote in a state election at the polls in Dover, Miss. about 1953-54 but was not permitted to by an election official.
No. 82026 Date: About 1955 Deterred	Told by a white planter in about 1955 that he should remove name from voter list. He did. No threats. Registrar asked if he was forced to have his name removed and he said he was so advised. Has not attempted to register or vote since.

[fol. 1589]

No. 82022 Date: 1955 Deterred	He removed his name from the voting list in 1955 after a white merchant told him he would be unable to buy gasoline anywhere unless he had it removed. He then re-registered.

No. 82013 Date: About 1955 Deterred	A white planter asked him to remove his name from voters list. No threats. He did. Has not attempted to register or vote since.
No. 82002 Date: June or July, 1955 Deterred	Never attempted to vote. In June or July, 1955, a Negro told her that two white men wished her and her husband to remove their names from voting list. If they didn't, they wouldn't be able to sell crops or get any help from white persons. They had their names removed.
No. 82001 Date: July or Aug., 1955 Deterred	Never tried to vote. In July or August, 1955, a Negro told him and his wife that two white leaders in the community wanted them to have their names removed from voters list. If they didn't, they wouldn't get any help, be able to sell crops or get cotton ginned. Also had a white merchant tell him, about two days later, he should remove name. He did.
No. 82007 Date: August, 1955 Deterred	Paid poll tax once but never tried to vote. About August, 1955, a white planter requested him to remove name from list. He did so as was afraid would lose job as a school teacher if he didn't.
No. 82016 Date: Fall, 1955 Deterred	Told by a Negro in the Fall of 1955 to remove name from list. The Negro mentioned two white leaders in the community. Had name removed and told Registrar she wasn't doing this voluntarily.

No. 82005 Date: October, 1955 Deterred	He and his wife had their names removed from voter list about October, 1955. Had not been contacted by anyone but had heard that about 50-60 Negroes in Bentonia took off names. A Negro told him after he had removed name that a white man wanted him to have name removed.
No. 82004 Date: October, 1955 Deterred	Never tried to vote. She and husband had their names removed from voters list about October, 1955. Not told to do so but heard other Negroes were doing so. Says a Negro told her husband that a white man wanted to talk to him about removing name.
No. 82038 Date: About Sept. 1, 1955 Deterred	Paid poll tax but never tried to vote. Son told her that a white planter said she should remove name from voter list if she wanted to get a job. She was a school teacher at the time. She removed name about 9/1/55. Still pays poll tax but has not attempted to register since.

[fol. 1590]

No. 82020 Date: About 1955 or 1956 Deterred	About 1955 or 1956 a white merchant who had been extending credit, asked him to remove name from voter list. No threats. He did. Has not attempted to register or vote since.
No. 82018 Date: Spring 1955 & 1956 Deterred	In Spring of 1955, a white man warned him it would be too bad for him unless he had his name removed from voter list. A white friend told him the same day that this would be wise. In March, 1956, the white friend told him to remove his name if he wanted to buy some land. He did so.

No. 82019 Date: About 1956 Deterred	A white planter, in early 1956, asked her to remove name from voter list but she declined.
No. 82011 Date: August 27, 1956 Deterred	He voted in an election on August 27, 1956. The following day two white men came to his home and told him not to register or vote again. He has not voted since then.

[fol. 1591] Yazoo County #45

Part II

Application Forms

1. Number of Forms

There are 1249 application forms, 2 of which are rejected. The race of the applicant has not been identified sufficiently for breakdown of forms by race.

2. Period which Forms Cover

March 9, 1955-June 21, 1962.

3. Analysis of Forms

a. Selection of Constitutional Sections

Of the 1249 forms, 861 received Section 14 and 314 received Section 30. The remaining 74 are scattered among many sections.

b. Assistance

Preliminary analysis indicates the following:

(1) 30 registrants wrote the following interpretation in Question 19 for Section 14 of the Mississippi Constitution:

"None of these things can be taken away from a person until he has a fair trial".

(2) 41 registrants wrote the following interpretation in Question 19, for Section 30 of the Mississippi Constitution:

"You can't put a person in prison because he can't pay his debts".

[fol. 1592] (3) The records show 21 sets (of 2 applications) of identical interpretations in Question 19 on the form.

(4) The records show 16 sets (of 2) of identical answers to Question 20 on the form.

(5) 85 registrants, in answer to Question 20, wrote the following statement of duties and obligations of citizenship:

"Protect [or defend] my county, vote in all elections and obey the law".

(6) 27 registrants, in answer to Question 20, wrote the following statement of duties and obligations of citizenship:

"To vote. Obey the laws".

c. Grading

(1) At least 15 registrants wrote wholly unresponsive interpretations to sections of the Constitution.

(2) 20 registrants wrote *Nothing* for Questions 19 or 20.

[fol. 1593] Amite Co. #46

Part I

A

The following incidents of deterrence with respect to Negro registration efforts occurred in Amite County at the places noted.

57017 57018 57031 0001	8/15/61 Deterred W. D. Carwile C. Laton Bates	Robert Moses, a Negro voter registration worker, accompanied Ernest Isaacs, Birdee Lee Hughes, and Matilda Schoby, to register to vote at Liberty, Mississippi. While the Negroes were applying to register to vote, Mr. Carwile, a State Highway Patrol officer, was in and out of the Circuit Clerk's office. When the Negroes finished, they returned to their car and proceeded to McComb, Mississippi.

Ernest Isaacs was driving. They were followed by Carwile and Laton Bates—Bates is the Town Marshal of Liberty. Shortly after their car left Amite County and entered Pike County they were stopped. Isaacs was ordered to go to the police car for questioning. Moses got out of the car and asked Carwile the nature of the charges. Carwile ordered Moses to return to Isaac's car. Carwile then questioned Isaacs about Moses' registration activities. The Negroes were then ordered to follow the police car to the Justice of the Peace in Pike County.

Carwile and the County Attorney of Pike County, Joe Pigott, then prepared an affidavit charging Moses with interfering with an arrest and then changed this to impeding an officer in the course of his duties, no arrest having been made which he could have interfered with. Moses was then convicted and fined $50 plus $5 costs. The Justice of the Peace then suspended the fine. Moses then refused to pay the $5 court costs and was jailed until he did so.

[fol. 1594]

3005 8/29/61
3015 Deterred
0001 Jerry Caston
Billy Jack Caston

Curtis Dawson and Alfred Knox were walking to the Courthouse in Liberty, Mississippi to register to vote. They were accompanied by Robert Moses, a SNCC worker. They were stopped on the street and Jerry Caston beat Robert Moses. A total of nine stitches were necessary to close the cuts on Moses' head. Curtis Dawson and Alfred Knox did not go on and register.

3022 3034 3036 0001 3004	9/5/61 Deterred Bryant Jones J. M. Reynolds	Travis Britt and Robert Moses, Negro voter registration workers, accompanied Mary Lee Nunnery, Marie Wells, and Mrs. Felton Weathersby, to register to vote. Mrs. Nunnery, Mrs. Wells and Mrs. Weathersby went into the registrar's office and began filling out application forms. The Sections they had to copy and interpret were very long and while they were filling out the forms Bryant Jones and J. W. Reynolds were harassing Britt and Moses and then Bryant Jones beat up Travis Britt before a crowd of white men on the lawn behind the courthouse. The Negroes filling out forms heard the beating and could see the crowd through the window in the registrar's office. They left without completing their forms.

B

The following Negro citizens of Amite County were required to apply to register one at a time though in the past applicants have been permitted to apply more than one at a time. The events described below occurred at the Circuit Clerk's office in Amite County.

3021	8/21/62 Rejected Whittington —R	Went with group of Negroes to register. Told to go one at a time. He filled out forms, copied and interpreted Sec. 160 of Constitution. Was rejected.

[fol. 1595]

3022	8/21/62 Refused	Went with group of Negroes to register. Told to go in one at a time. Storm came up while she waited her turn, she left.
3037	8/21/62 Delayed	Negroes were only permitted to apply one at a time.

3038	8/21/62 Refused	Went with group of Negroes to register. Had to go one at a time. Unable to apply because not enough time.
3040	8/21/62 Rejected Whittington —R	Went with group of Negroes to register. Could only go in one at a time. Completed forms—took over one hour. Copied and interpreted Sec. 221 of Constitution.
3042	8/21/62 Rejected Whittington —R	Went with group of Negroes to register. Told they had to go in one at a time. Completed forms and copied and wrote interpretation of Sec. 161 of Constitution, was rejected.

[fol. 1596] Amite County

Part I

B

The following Negro citizens of Amite County were not permitted to register or were delayed in their attempts to register at the Circuit Clerk's office in Amite County.

30050	About 1952 No apply Whittington —R	Went to Registrar's Office and only Mr. Whittington there. Told him he wished to register. Was told he had not paid poll tax, then it was found that he had. Then he was denied opportunity to register because it would be best if "colored people" would "wait a while".
30055	In January 1954 or 1955 No apply Whittington —R	She and Mrs. Estelle Turner, a Negro, asked Mr. Whittington if they could register. He told them they would have to know about the Constitution of the state and they did not register.

30056	August 18, 1960 No apply Delayed Whittington —R	Went with Ernest Isaacs and they were told by Mr. Whittington that he was checking marriage license. Then Mr. Whittington left and did not return while they waited on him.
30056	Late August, 1960 No apply Delayed Whittington —R	Went with Ernest Isaacs. Told by Mr. Whittington that he was busy and he left the office.
30056	August 15, 1961 Delayed Form Rejected Whittington —R	Went with Ernest Isaacs, Bob Moses and Mrs. Birdie Lee Hughes, all Negroes. She and Mrs. Hughes had to wait while Isaacs filled out the first of his form. After lunch they were given forms. All three were told they failed. They were told they could not reapply for six months.
30053	August 15, 1961 Delayed Form Rejected Whittington —R	Went with Bob Moses, Ernest Isaacs, and Matilda Schoby, all Negroes. Registrar was there and some other whites came in and out including a highway patrolman. Only Isaacs was allowed to register before lunch time and she and Mrs. Schoby had to wait. She and Mrs. Schoby were given forms after lunch, completed them, and were told they failed.

[fol. 1597] Amite County #46

Part III

Application Forms

1. Number of Forms

There have been a very small number of forms retained in Amite County. There is a problem of identification of the race of the persons who completed the forms. For those whose applications were accepted, the plaintiff knows that one of them is a Negro and believes the rest are all white. For the rejected applications, the plaintiff knows that twenty are Negroes and two are whites and believes that of the rest, one is Negro and the rest are whites. Following is a chart of the applications on file at the Registrar's office at the time of photographing on March 29, 1963.

Whites		
Accepted (Since June 26, 1962)	18	
Rejected (Since June 14, 1955)	18	(including at least 4, possibly 5, that did not meet the residence requirement)
Negroes		
Accepted (Since June 26, 1962)	1	
Rejected (Since June 14, 1955)	21	

[fol. 1598] 2. Periods Covered

The date of the first accepted application retained by the Registrar and made available to the plaintiff to photograph is dated June 26, 1962. The date of the first rejected application was June 14, 1955.

The period during which the Registrar has been retaining accepted applications contains at least three important dates: (1) August, 1961 when the then recently organized drive to encourage Negroes in Amite County to register began to result in attempts by Negroes to register in small groups; (2) October 4, 1961 when John Doar, an Attorney with the Civil Rights Division of the Department of Justice, first inspected the records of the Registrar and informed

him of the federal law forbidding the destruction of voting records, including accepted applications; (3) June 19, 1962 when Gerald Stern, an Attorney with the Civil Rights Division of the Department of Justice, again inspected the records and informed the Registrar again of the federal law regarding the destruction of voting records and furnished him with a copy of the relevant statutes setting forth such requirements.

3. Analysis of Forms

a. Selection of Sections

The following sets forth the sections used by the Registrar for the various persons filling out applications:

[fol. 1599]

b. Assistance

The small group of white accepted applications present a striking picture, especially when considered with forms from other counties. Every form, with occasional minor exceptions, has every question answered completely, correctly, and, for multiple question such as Question 6 on the form, consecutively. Questions 19 and 20 are fully answered and on many of the forms, the answers fill or nearly fill the space provided.

c. Grading

It is impossible to determine positively the basis for rejection of the Negro applications. Only seven of the twenty-one rejected Negroes attempted to interpret the section of the Constitution assigned to them. Three of their forms have check marks by questions which they left blank or only partially answered (Mrs. Birdie L. Hughes' form of August 15, 1961; Mrs. Matilda Schoby's form of August 15, 1961; and Eddie Nunnery's form probably of August 22, 1961). One additional form (Eddie Nunnery's form of August 21, 1962) had a mark by his answer to Question 19 which could indicate it was unacceptable. None of the rejected Negro forms except perhaps the form executed by William Weathersby on August 21, 1962, which was not clearly photographed by the plaintiff, compares with the long, complete and complex constitutional interpretations which most of the white forms exhibit.

[fol. 1600]

(1) Rejected Negroes
1, 72, 112, 131, 160 (2 times), 161, 181, 197, 211 (2 times), 213A (2 times), 218, 221, 229, 236, 241 (2 times), 256 (2 times).

(2) Rejected Whites
1 (two times), 17, 18, 23 (5 times), 72, 88, 128, 154, 160, 182.

(3) Accepted Negroes
211

(4) Accepted Whites
1, 18, 22, 23 (2 times), 41 (2 times), 81 (2 times), 87, 96, 160 (2 times), 161 (2 times), 162, 175, 260.

There are very few sections which were given to both Negroes and whites. The sections assigned only to Negroes almost without exception far exceed in length and complexity those assigned only to whites. This is despite the fact that many of the sections assigned only to whites are only very occasionally, if ever, assigned in other counties and they are themselves long and complex. To illustrate the length and difficulty of the sections assigned to Negroes, there are a large number of Negroes who had to have far more space to copy the section assigned them than is provided on the application form. Some of them wrote on the back of the form filling over a half of the form, and some had to use all or a good part of the space provided for the interpretation in Question 9 to copy their section.

[fol. 1601] Amite County #46

Part III

The following is a list of Negroes who have been denied the right to register to vote due to the requirement that each applicant must interpret a section of the Constitution and due to the extremely long and difficult sections which the registrar assigned them:

Ernest J. Doar
Mrs. Birdie L. Hughes
Eddie Nunnery
Mary Lee Nunnery
Mrs. Matilda Schoby
Mable L. Weathersby
Telton Weathersby
Tommie Lee Weathersby
Marie Wells

[fol. 1602] Copiah #47

Part I

A

The following Negro citizens of Copiah County were not permitted to apply to register or were told they could not reapply for six months. All events described below occurred at the Circuit Clerk's office in Copiah County.

15002	Mar., 1955 Refused Weeks-R	Was told by Weeks new registration book had not arrived.
15002	April, 1955 Refused Weeks-R	Was told by Weeks new registration book had not arrived.
15002	May, 1955 Refused Weeks-R	Was told by Weeks that new registration book had not arrived.

15040	1955 Refused Weeks-R	Went to Circuit Clerk's office and was told by Weeks that there were no books ready yet for "colored folks."
15010	Between 1955-1957 Rejected Delay Weeks-R, Woman	Went to register and met Mrs. Callahan there. Mr. Weeks gave her an application and pointed out section of constitution on habeas corpus for her to interpret. She completed form and handed it to woman who told her she had not filled out form correctly. When asked, woman refused to point out what the errors were. Told she could not return for six months.
15010	1958 (Approx.) Refused Man	Arrived with three other teachers at 4:45 P.M. Was told to come back next day because 45 minutes needed to fill out form.
15012	Jan., 1959 Refused Weeks-R	Went with 2 or 3 to apply about 4:00 P.M.; was told by Mr. Weeks that they would not have time to complete application.
15023	Jan., 1959 Refused Weeks-R	Went to Clerk's office with several others. Was told there were no application blanks at that time.

[fol. 1603]

15015	1959 Refused Weeks-R	Was told by Weeks that the registration books were not there.
15038	April, 1960 Refused Man	Was told she had to have paid poll taxes for two consecutive years and since she had not done so she could not register.
15037	Fall, 1960 Refused Weeks-R	Was told by Weeks that the books were closed at this time. Was told by Weeks to learn Constitution and come back again.

15012	Jan., 1961 Refused Weeks-R	Went to apply and was told by Mr. Weeks that no registration forms available.
15007	Jan. 29, 1963 Refused Mrs. Ferguson	Went with another and arrived Clerk's office approximately 4:45 P.M. Was told it was too late to apply that day and to come back again.
15040	Jan., 1963 Refused Weeks-R	Went to registration office and was told by Weeks that he was too busy to handle his registration at this time.
15004	Jan., 1960 Rejected Delay Woman	Filled out application. Does not recall either copying or interpreting Constitution. Forgot his glasses and reading was difficult. Was told he had not passed and that he could come back in six months.

B

The following Negro citizen of Copiah County was deterred from applying to register by the existence of the interpretation test.

15029	1962 Deterred	Has never attempted because he doesn't know anything about the Constitution and believes he would not, therefore, be accepted.

[fol. 1604] Copiah County #47

Part II

Application Forms

1. Number of Forms

February 15, 1960—January 3, 1963

Whites	
Accepted	475
Rejected	5*
Negroes	
Accepted	4
Rejected	9

There are 50 additional forms from persons whose race is not presently known but who are believed to be white.

2. Period Covered

On September 17, 1963, the Government applied to the United States District Court (S.D., Miss.) for an order to inspect and reproduce the voter registration records of Copiah County. That order was issued on December 10, 1962, and the records were duly photographed on January 3 and 4, 1963. The first preserved application form was dated February 15, 1960. In all, 543 application forms were photographed.

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* No rejected white applicant answered either Item 19 or Item 20. One apparently stopped filling out his form because he learned he already was registered in the County. Another lacked sufficient residence.

[fol. 1605] 3. Analysis of Forms

a. Selection of Constitutional Sections

Section	Whites*	Negroes
8	7	0
9	6	0
11	1	0
12	8	0
13	1	0
14	5	0
15	1	0
20	3	0
22	45	0
25	47	6
28	7	0
30	388	0
31		1
32	1	0
33	5	0
35	1	0
63	1	0
98	1	5
Section Unknown		1

* Included herein are the application forms of those persons mentioned in Section 1 hereof whose race is not definitely established but who are believed to be white.

[fol. 1606] (1) Section 30 of the Mississippi Constitution reads as follows:

"There shall be no imprisonment for debt."

This section was assigned to 388 of the 528 white applicants (approximately 73%) and to none of the Negroes.

(2) Section 98 of the Mississippi Constitution reads as follows:

"No lottery shall ever be allowed, or be advertised by newspapers, or otherwise, or its tickets be sold in this state; and the legislature shall provide by law for the enforcement of this provision; nor shall any lottery heretofore authorized be permitted to be drawn or its tickets sold."

This section was assigned to 5 of the 13 Negroes (39%) and to one white person. The only white person to whom Section 98 was assigned (William C. Harrell) applied on the same day (1-9-61) as one of the Negroes (Roosevelt Lux) who received that section. Of the white applicants whose applications have been preserved and who applied

prior to Roosevelt Lux (that is between 2-15-60 and 1-9-61) 84 of the 94 applicants received Section 30. Among the 10 exceptions who did not receive this section, there were seven applicants for absentee registration and three engineers. After 1-9-61 until the next Negro applied on 1-24-61, 25 of the 27 applicants who applied received Section 30. A radio announcer and a rancher did not receive this section.

[fol. 1607] (3) The first five Negro applicants whose application forms were preserved by the registrar were all assigned Section 98. The first Negro applicants who did not receive Section 98 were Delphine Gordon and Willie Gordon who applied on 1-25-62.

(4) During the two year period from February 15, 1960 to January 22, 1962, excluding the seven absentee applicants, of the first 283 white applicants, 277 received Section 30. Of the six white applicants who received different sections, three were the engineers mentioned previously, one a radio announcer, one the service manager of the Butane Gas Company and one a rancher. Throughout this period, all Negro applicants received Section 98.

(5) The practice of assigning Section 30 to virtually all white applicants and Section 98 to all Negro applicants continued from the date of the first form until January 23, 1962.

(6) Even after this period, the same general practice of assigning Section 30 to white applicants continued. 101 of the 192 white applicants received Section 30. No Negroes received this section.

b. Assistance to Whites

The interpretations of white applicants for Section 30 of the Constitution fall into several different answers. They are:

[fol. 1608] (1) Question 19 and 20

The following applicants answered Section 30 with similar compound sentences, saying essentially, "all legal debts should be paid, but I can't be put in jail if I fail to do so."

Within the following groups not only is the interpretation similar but also the answers to item 20.

(a) 5 White Registrants

	Q. 19	Q. 20
Martha Rice Gates 10-20-60	All legal debts should be paid—However, if unable to pay I shall not be confined to jail—	Exercise my right to vote—Honor and obey the laws of the State and Country—Stand behind the church
Girl Ellis Dixon 10-22-60	all legal debts should be paid. but I can not be put in jail if I fail to do so—	Exercise my right to vote and obay all laws.
Myrtle Norman Blakeney 2-3-62	All debts should be paid but I cannot be imprisoned if I fail to pay my debts.	Exercise my right to vote and obey the laws of my state and government.
Frank Ramsey Bailey 4-14-62	All legal debts should be paid but I can't be put in jail for not paying my debts.	I must pay my poll tax and excrise my right to vote and obey all laws.
Joyce Lowery Raney 7-5-62	All legal debts should be paid, but you can't be put in jail for not paying	Exersise my right to vote and obey all laws.

[fol. 1609]

(b) 12 White Registrants

	Q. 19	Q. 20
Billie Greer Walker 2-27-60	All honest debts must be paid but I can not be confined to a jail for failure to do so.	I will honor my school & church and exercise my right to vote and obey all laws.
John Prentiss Jones 11-8-60	all debts should be payed but I cannot be put in prison if I fail to do so.	honor my school and church and obey all laws of my country
Mary Frances Taylor 1-28-61	all debts must be paid but if I fail to pay them I cannot be put in jail	Honor my school, church and obey all order of my country
Alice Marie Hall Perkins 1-2-62	All legal debts should be paid but if I fail to pay my debts I can not be put in prison	Honor my Church & school and obey all laws.
Richard E. Belding 1-17-61	All leagal depts should be paid in full, but in the event that I cannot payemtn I shall not be placed in jail.	honor the Church, school, Laws, and all forms to goverment if I should be call into active duty I shall fight for the constitution of the United States of America.

	Q. 19	Q. 20
Mildred Charlene T. McNeill 1-28-61	all debts should be paid but upon not doing so I can not be jailed for such.	Honor laws of of the state, churches, schools respect flag and government.
Bobbye Sue Whittington 1-28-61	Pay all debts made, but if I fail to do so I cannot be confined in jail.	honor churches, schools and laws of state respect flag and government
Doris Turnage Brumley 1-28-61	All debts should be paid but if I fail to do so I cannot be confined in a prison	Honor my school, church and obey all laws
[fol. 1610]		
Lloyd McCardle 1-31-62	all debts should be paid but no prison term cannot be assessed against me if I fail to pay my debts-	The duty of a Citizen is to honor the Schools, churches, & obey all laws.
Barney Lamar Moman 1-31-61	Debts should be paid But not confined to Prison for not Paying them	Honor School & Church and Flag
Mrs. J. A. Grace 1-31-61	All legal debts must be paid but I can not be put in Jail if I fail to pay my debts.	Honor my church-school & law of my country.
Lacey H. Tadlock 8-15-62	I am obligated to pay all my debts but in such case that I do not, I will not be imprisoned for it.	Honor my churches and school exercise my right to vote and obey all laws.

(c) 7 White Registrants

Nettie Hutson Greer 2-27-60	all legal debt must be paid. I cannot be confined to an instutione or jail to failure to do so.	I will honor my flag & county & obey all laws.
Luther Littleton 7-16-60	All Legal debts should be paid but no imprisonment for failure to do so.	I will honor my flag and obey all law to my State and Country
Bernice Alton Kennedy 1-4-61	all debts should be paid	hondon my falgo and country and oboy laws
Shirley Marie Thedford 9-28-61	All legal debt should be paid but I cannot be confined in a jail if I fail to pay Debt	I will honor my flag and country to bay all laws.
Willie Velma M. Cagle 11-24-61	all legal debts should be paid, but I I cannot be comfined if I fail to do so	Obey all laws of my county and honor my flag and country.

[fol. 1611]

	Q. 19	Q. 20
Charles Amos Walker 12-29-61	All Legal Debts should be Paid	Honor my flag & country & obey all Laws
Robert Adrian Lowery 7-5-62	All legal debt should be paid but there shall not be no imprisonment if not paid.	Honor my flag and country and obey all laws.

(d) 9 White Registrants

Cecil Lamar Bowlin 5-24-60	All Legal debts Should be paid, but I can not be confined to any Jail or prison if I fail to do so.	I will obey all Laws under the Constitution of my Country.
Marguerite Hammack Walters 4-1-60	All legal debts should be paid but I can not be confind to a jail or institution if I failed to do so.	I'll exercise the right to vote to honor my country, church, etc-
Hazle Bennett Bryant 11-4-60	All debts should be paid but you will not be confined to prison if not paid.	To obey all laws & honor your chureh & country.
Franklin M. Bryant 11-4-61	all depts should be paid but you will not be confined to prison if not paied	is to obay all laws under my flag & contury
Elsma Parish Cliburn 1-23-61	All honest debts shall be paid and I not be confined in prison if can I fail to do so	Obey all laws Honor my flag & country
Arch G. Long, Jr. 1-28-61	All just debts should be paid but if not I cannot be imprisoned for same.	Duty to God and my country.
Triutt Palmer Wilks 1-31-61	Debts are expected to be paid but not subject to jail imprisonment if unable to pay	Poll tax paid Honor God, Country, State

[fol. 1612]

Bobby Joe Whittington 1-27-62	all debt should be paid But no prison sence should be placed on one if I don't.	To obey all laws in the consitution of my state and government.
Ludie Mae M. Vaughn 9-4-62	All leagel debts should be but under our law I can no be tryed for them.	execise my rights to vote and honor my flad and country

(2). 113 white registrants began their interpretations with the phrase "a person"; 41 of these began it with the phrase "a person cannot be" and concluded it with the phrase "for an honest debt".

(a) 17 White Registrants—verbatim interpretations and very similar statement of duties and obligations.

	Q. 19	Q. 20
Nasia Clovis Whittington 6-6-60	A person can not be put in jail for an honest debt.	obey all laws and be a qualified elector.
Mrs. Mary Yarbrough 6-15-60	A person cannot be put in jail for an honest debt.	To obey all the laws and register and vote for the persons of your choice
Lorene Ross Sharp 7-2-60	A person cannot be put in jail for an honest debt—	To be a good citizen —uphold constitution and obey all laws. and be a quilified elector.
Elvin Bennett Buckley 7-8-60	A person cannot be put in jail for an honest debt.	obey all the laws and be a qualified elector
Sally Conn Beasley 11-8-60	a person cannot be put in Jail for an honest debt.	Obey all the laws. Be a qualified elector–
Mary Cole Berry 11-22-60	a person cannot be put in jail for an honest debt.	obey all the laws of the Government, Be a registered qualified voter
Lewis Elwood Greene 1-30-61	a person Cannot be put in jail for an honest debt.	To be a good citizen, you have to obey all laws, up hold the Constitution and be a qualified elector.
Frances Addine Hayden 1-30-61	a person can not be put in jail for an honest debt.	obey all laws uphold constitution Be a qualified elector
[fol. 1613]		
Bessie Laura D. Lowery 5-30-61	a person cannot be put in Jail for an honest debt.	First you have to obey all the laws & up hold the constitution
Benny Charles Walker 7-29-61	a person cannot be put in Jail for an honest dept.	to be a quilitfied to vote to obey all laws up hold the constitution
Clair Bell Allen 7-29-61	A person cannot be put in jail for an honest debt.	Obey all the laws uphold the constitution. Be a qualified voter

	Q. 19	Q. 20
Mary Selma D. Tisdale 1-16-62	a person cannot be put in jail for an honest debt.	Obey all the Laws and uphold the constituition and be a qualified elector.
Lucy Merle Martin 1-27-62	A person can not be put in jail for an honset debt—	To obey the laws and uphold the constitution and vote.
Mae Catherine Shumaker 1-27-62	A person can not be put in jail for an honest debt.	Obey all laws that the government of Mississippi have Registrater to vote
Louise Johnson Sims 2-22-62	A person can not be put in jail for an honest debt.	You have to obey all laws. Uphold the constitution and exercise your right of voting

[fol. 1614]

	Q. 19	Q. 20
Vernon Gerald Turlow 5-14-62	A person cannot be put in jail for an honest debt	help obey all laws, up hold constitutional register and Vote for your choice
Fred Lee Russell, Jr. 1-25-61	A person shall not be put in jail for an honest debt.	Uphold and, obey Laws Be a qualified Elector

[fol. 1615] (b) 24 White Registrants (minor variations from (a))

	Q. 19	Q. 20
Robert Hunter Smith 8-23-61	A Person can't Be Put in Jail for an honest Debt.	To uphold the constitution and obey all the Laws, and Register & vote.
Linnie Zelma McMillan 1-26-62	A person can't be put in jail for an honest debt.	Obey laws—Exercise yourself by voting.
Gloria Ann O'Cain 1-27-61	A person cannot be put in jail for a honest debt.	Must obey & abide by all laws of government—Vote for and uphold what you believe to be right.
Henry Cleveland Bates 1-30-61	aperson can not Be put in jail for a honest debt.	Oby all laws, Registor and vote.
Willie Bell Bates 1-30-61	a person can not be put in jail for a honest debt.	Obey all laws, Register and Vote.
Thressia Gwian Maddox Moman 2-3-61	A person cannot be put in jail for a honest debt.	You have to bear all laws and pay your taxes, and register and vote.

	Q. 19	Q. 20
Juliet Kinstley 7-8-61	A Person cannot be put in Jail for a honest debt.	Obay all the laws. be a qualified elector.
Troy Leroy Allen 7-29-61	A person cannot be put in Jail for a honest debt.	I obey all the laws and uphold the constitution be a qualified elector.
Harry Jim Hayden 1-30-61	A person cannot be jailed for an honest debt.	A citizen should uphold all the laws of the constitution and be a qualified elector.
[fol. 1616]		
Cornelia Russell Hood 2-3-61	A person cannot be jailed for an honest debt.	A citizen is obligated to vote for the person of their choice. be loyal to their state, and take an active part in its growth and activities.
Barbara Gladys Blaine 3-20-62	A person cannot be jailed for honest debt.	Obey all the laws set forth by the constitution. Exercise the privilege of voting.
Syretha Mae Young Tadlock 1-27-61	a person cannot be placed in jail for an honest debt.	Obey the laws. Uphold the constitution Be a qualified elector
Suzanne Frances Spell 8-16-60	A person cannot be placed in jail for an honest debt.	The citizen has an obligation to vote and uphold the constitution of the United States. To obey all laws enacted by the elected representatives of the people.
Nancy Lee Watson 10-4-61	Person can not be put in jail for and honest Debt.	Obay the Laws up hold the constitution, and vote your convictions.
Myra Melecse McNabb Reamer 1-27-61	Person cannot be put in jail for an honest debt.	Be a qualified elector—Obey all the laws.
Mrs. Lona B. Fuller 7-26-60	Person can not be put in jail for an honest debt.	Obey all the laws and be an qualitified elector.
Rebecca Barlow 7-11-61	This section of the Constitution of Mississippi means that a person cannot be put in jail for an honest debt.	I shall obey all laws and honor my flag and country, exercise my right to vote and attend the church of my choice.

[fol. 1617]	Q. 19	Q. 20
Carolyn Thompson 2-29-60	A person Cannot be put in jail for honest debts.	Obey all laws & be a qualified elector.
Loyal Brown Morris 3-17-61	Person cannot Be put in Jail for Honest debts.	Obey all Laws Up Hold constitution Reger & vote
Joe Ben Pezant 1-30-62	A person shall not be put in jail for an honest debt.	You have to obey the laws, uphold the constitution, be a qualified elector.
Bettye Blythe Russum 6-9-60	A person can not be put in prison for any honest debt.	The duties of a citizen are to obey the laws, be a qualified elector.
Lilly Katherine Vaughn 9-24-60	A person cannot be put in prison for an honest Debt.	Obey all laws Be a good citizen uphold constitutional Register and Vote.
Everett C. Taylor 9-24-60	A person cannot be put in Prison for an honest debt.	Obey all the laws, up hold the constitution, Register and vote.
Joyce Thomas Bennett 1-30-61	A person cannot be put in prison for an honest debt.	Obey laws, uphold constitution, be qualified elector

[fol. 1618] (c) 31 white registrants—verbatim interpretations omitted "honest" from group (a) above.

Maggie Lee Carr 2-15-60	Person cannot be put in jail for a Debt.	Obey all the Laws Be a qualified elector.
Inez Bell Hammons 6-2-60	A person can not be put in jail for a debt.	Obey laws, uphold constitution, register to vote.
Marvin Lee Brown 9-16-60	A Person cannot be put in Jail for a debt.	To obay all the laws and register and Vote.
John Thomas Walker 9-26-60	A person can not be put in jail for a debt.	Obey all laws and be a qualified elector.
Donis Pearl Rickett 10-5-60	A person can't be put in jail for adebt.	Obey all the *laws*. and up hold the constitution Be a qualified elector.
Mack D. Owens 9-25-61	a person can not be put in Jail for Debst.	OBey all laws. Be qualified Elector.

	Q. 19	Q. 20
Jo Ann Wolverton Newman 1-5-61	A person can not be put in jail for a debt.	Obey all laws & Regulations And be a qualified elector.
Betty Rose Hennington Beach 1-12-61	A person can not be put in jail for a debt.	To be a citizen obey all the laws. Uphold the constitution and be a qualified elector.
William Ray Russell 1-13-61	A Person cannot be put in jail for a debt.	Obey all the laws. Uphold the constitution Regester and vote.
Margaret Aretha Brent 1-13-61	A person cannot be put in jail for a debt.	a person has to obey all laws, be a qualified voter to be a good citizen.
[fol. 1619]		
Blam H. Smith, Jr. 1-14-61	a person cannot be put in jail for a debt.	Obey all laws and be a qualified elector.
Amarella S. Bridges 1-21-61	A person cannot be put in jail for a debt.	Obey all the laws uphold constitutions Be a qualified Elector.
Ann Russell Newell 1-31-61	A person cannot be put in jail for a debt.	Obey all laws, register and vote, uphold all the laws.
Alco LeMaire Hall 2-4-61	A person cannot be put in an jail for a debt.	1st Obey all the laws. 2nd Uphold the constitution. 3rd Be a qualified voter.
Tommie Frank Little 6-26-61	A person can not be put in Jail for a Debt.	To obay all Law. be a qualified elector.
Vivian Barker Myers 10-12-61	A person cannot be put in jail for a debt.	Obey all laws Uphold the Constitution Be a qualified elector.
Clara Ann Beaube 11-28-61	A person can not be put in jail for a debt.	Obey all laws of the Constitution Be a qualified elector.
Lee Roy Johnson 1-3-62	A Person can not be Put in Jail for a debt.	Obey all laws and Be a qualified Elector.
Emma Clara Mullen 1-16-62	a person cannot be put in Jail for a debt.	Obey all laws uphold Constitution Register and vote.

[fol. 1620]	Q. 19	Q. 20
Leroy Walter Gandy 1-17-62	A person can not be put in jail for a debt.	up hold the laws and the constitutions of this State and the Union and be a qualified elector.
Herbert Walters 1-20-62	person can not be put in jail for a debt.	obay all laws, uphold all the constitution and register and vote.
Leva Martin (Mrs.) 1-24-62	A Person Canot Be Put in Jail for a Debt.	OBay the Law Regester & Vote.
Maxine Freels 1-27-62	A person cannot be put in jail for a debt.	Obey the laws, uphold the constitution and exercise your privilege of voting.
Luther Hamilton 2-10-62	A person can not be put in jail for a debt.	obey all Laws. register and Vote take part in government affairs.
Annie B. Yarbrough Myers 3-2-62	A person cannot be put in Jail for a debt.	Obey the law & be a qualified Voter.
Mary Pauline Bolls Jones 3-2-62	A person can not be put in jail for a debt.	obey the law & be a qualified voter.
Eula B. Robinson (Mrs.) 3-7-62	A person can not be put in jail for a debt.	obey all laws uphold the constitution and be a qualified elector.
Nelson Baker Wiggins 4-23-62	A person cannot be put in jail for a Debt.	obey all laws Uphold constitution Register & Vote.
Laura Ann Welch 5-2-62	a person cannot be put in jail for a debt.	(1) a oby all law register and vote.
Bamma Waldrop Russell 6-29-62	A person can not be Put in jail for a debt.	obey all the laws of your State and government. and exercise the right to Vote.
Fred L. Williams 7-14-62	a person cannot be put in Jail for a debt.	Obey the laws. Regeister and vote.

[fol. 1621] (d) The following applicants wrote interpretations to Section 30 very similar to (c) above; the answers to question 20 were also very similar.

Name	Date of Application
Elrod, Cairdine E.	11-5-60
Elrod, Carrie Littleton	11-5-60
Ashley, Martha Ann F.	1-3-62
Russell, Geraldine Myers	10-12-61
Grafton, Shirley Odom	4-6-60
Keys, James Estus	6-28-60
Mullen, Billy	1-16-62
Berry, Carl Franklin	3-5-60
Whitehead, Irma Jean	1-23-62
Bishop, Kenneth Dewitt	5-25-62
Dear, Edna Maud Garrett	7-6-62
Lang, Nola May	1-30-61
Williams, Clara W.	10-19-61
Cook, Donald Keith	11-20-61
Boutwell, Minnie Lee	1-31-61
Lindsey, Nell Vaughn	7-31-62
Leonard, Edwin L.	9-24-62
Bowers, Myrle M.	2-4-61
Berch, Florence Lanell	2-4-61
Whittington, Shirley Jan	11-5-60

(e) Eight white registrants—verbatim interpretations, and answers to question 20 very similar.

	Q. 19	Q. 20
McGrew, Mrs. Edwin O. 6-1-60	Means I cannot be put in jail for an honest debt.	I support the Constitution of the United States, obey all laws of State & county.
Gray, Billy Jean 1-18-61	It means I cannot be put in jail for an honest debt.	I should & take part in public affairs, vote, uphold law and order, support schools & churches.
Scott, Mrs. William D. 2-1-61	It means that I can not be put in jail for a honest debt.	First of all, register and vote, take part of the community affairs-support churches and school.
Thompson, Myrtis Opal 2-1-61	It means that I can't be put in jail for an honest debt.	Support schools and Churches, Vote. Freedom of speech.
[fol. 1622]		
Prine, Alford Richard 9-27-61	It means that I cannot be put in jail for an honest debt.	Register & vote, take part in public affairs support schools, churches; uphold law and order.
Woods, Phillip O., Jr. 2-17-62	It means that I can not be put in jail for an honest debt.	register, and vote, take part in public affairs, uphold law and order, support school and churches.

	Q. 19	Q. 20
Channell, James Melvin 3-1-62	It means that I cannot be put in jail for an honest debt.	You have to obey all of the laws and carry out your duty of Voting.
Raney, Johnny Elwin 4-10-62	It means that I can not be put in jail for an honesty debt.	The frist thin that I should do is register & then vote. I should support schools & churchs. up hold law & order. and take part in all public affairs.

(f) Seven white registrants—verbatim interpretations and also answers to question 20 very similar.

	Q. 19	Q. 20
Upton, Dan Kenneth 3-21-60	I can not be put in jail for an honest debt.	1 register and vote 2 defend free speech and press 3 support school and churches
McGrew, Edwin O. 6-1-60	I cannot be put in jail for an honest debt.	I support the constitution of the United States, obey all laws of State & County.
Singletary, Billie Sue 8-17-60	I cannot be put in jail for an honest debt.	Take part in public functions, Obey laws, Support schools and churches, Register & vote.
Hamrich, Nina Mae Smith 11-11-60	I cannot be put in jail for an honest debt.	Register and vote. Participate in local affairs such as: schools, churchs, charity, Uphold law and order, free speech, and free press.
[fol. 1623]		
Spraberry, Evelyn Delores S. 4-3-61	I can not be put in jail for an honest debt.	Obey all the laws, uphold the constitution, be a qualified elector.
Funchess, Virginia Ann Carney 2-27-62	I cannot be put in jail for an honest debt.	I should register and vote and take part in public affairs. I should uphold law and order, support the schools, and churches and be a good all-around citizen.
Keys, Ruby Beatrice 4-17-62	I cannot be put in jail for an honest debt.	obey all laws. Register and Vote and uphold the constitution.

(g) Seven white registrants whose forms contain slight variations in interpretations of groups (e) and (f) above.

Name	Date of Application
Wilson, Lena Crawford	1-4-62
McNair, Georgia Mae	2-1-61
Nobels, James Carlton	5-1-62
Young, Michael Bruce	1-20-62
Young, Jeanne Brewer	1-20-62
Little, Virginia Tanner	2-1-61
Richardson, Julia Ancaroni	5-10-61

(h) Ten white registrants similar to (e) and (f) above but omitted word "honest".

Name	Date of Application
Dell, Raymond F.	1-31-61
Bell, Otto K.	1-31-62
Crawford, Myrtis Myers	1-25-62
Dixon, Rosalee N.	10-22-60
Cupstid, Duie, Jr.	1-24-62
Long, Beulah	1-25-62
Varnado, Barbara Fay	9-29-62
Spurk, Raymond L.	1-18-61
Turnbow, Jo Gayle	1-17-62
Bailey, Mrs. R. B.	4-19-61

[fol. 1624] (i) 19 white registrants with almost verbatim interpretations. They are arranged in order of similarities in Question 20 (duties and obligations).

	Q. 19	Q. 20
Betty Young Owens 3-11-61	I can not be put in jail if I failed to pay my debt.	Honor my school & church and obey all the laws of my country.
Donald Wayne Miller 11-4-61	I cannot be put in jail if I fail to Pay my debts.	Honor my school, church and country an obay all laws.
Mrs. Flo Erwin Beasley 1-17-62	I cannot be put in jail if I fail to pay my debt's	under my school, church and country.
Bernice Sykes Walls (Mrs. Carlos, Jr.) 1-28-61	I cannot be put in jail if I fail to pay my debt.	Honor my school, church and country.
Marion E. Bates 2-1-61	I cannot be put in jail if I dont pay my debt.	honor my church and shool and obey my contintion.
Gary Boss Sandifer 1-30-61	I cantnot be put in Jail if I fail to pay my dept.	Obey all laws of my country.
Annie V. Parham Hamilton (Mrs. C. C.) 12-14-61	I can not be put in jail if I fail to pay my dierets.	Obey all Laws for my State and country.

	Q. 19	Q. 20
Donald Scott Jackson 1-22-62	I can't be put in Jail if I fell to pay my debt.	Retain my right to vote and obay alle laws.
Melba Lois Jones Allen (Mrs. Earl) 1-27-62	I can not be put in jial if I fail to pay my dedts.	Reserve the Right to vote and obay all laws.
Roy Eugene Drew 2-3-62	I can not be put in jail if I fail to pay my debt.	Pay my pole tax, exercise my right to vote, and to obey all laws.
[fol. 1625]		
Eugene Myers 2-5-62	I can not be put in jail if I fail to to pay my deftes.	Obey all the Laws of my country.
Hilda Alice Strong Nixon 4-7-62	I cannot be put in jail if I fail to pay my debts.	Exercise my right to vote and obey all laws.
Carles Walls Jr. 1-28-61	I cannot be Put in jail if I fail to pay my debts.	obey all the Laws of my country.
John Poche III 1-4-61	I cannot be put in jail if I fail to pay my debts.	to honor, obey all the laws, uphold the constitution and to be a qualified elector.
Robert M. Strong 3-5-62	I cannot be put in jail if I do not pay my debts.	Obey all laws of my county, State and country.
Joey Lee Carr 11-13-61	I can not be put in jail if I fail to pay my debts.	I Honner my Flag and country.
Thomas Hailey Thedford 9-28-61	I can not be put in prison if I fail To pay my Debts.	I will honor my flag & country & obey all laws.
James Howell Ahrend 9-16-61	I cannot be confined in any jail or prison if I fail to pay my debts.	I will honor my flag, country, and church and obey all laws of my government.
Harry W. King 3-20-62	I cannot be put in jail if I fail to pay my debts.	Honor my flag an country and obey all laws to my country

[fol. 1626] (j) 31 white registrants almost verbatim interpretations.

	Q. 19
Mary Elizabeth Miksa 10-20-60	It means exactly what it says. I cannot be placed in jail because of an honest debt.

Q. 19

Juanita Elizabeth E. Bobbitt 11-7-60	It means exactly what it says—you cannot be jailed for an honest debt.
Harold Colon Boone 11-9-60	It ment just what it said, I don't be put in jail for a honest debt.
Helen Young Bowman (Mrs. Louis V.) 11-11-60	It means exactly what it says I cannot be put in Jail for a honest debt.
Herbert Ray Hynum 12-28-60	It means exactly what it says I can not be Put in hail for and honest debt.
Lendeen Sue Hynum 12-28-60	It means What is says I can not be put in jail for a honest debt.
Joy Hitson Lowery (Mrs. Robert M.) 1-10-61	Exactly What it says I can not be put in jail for and honest debt.
Virginia Black Fugate (Mrs. Harry S.) 1-10-61	It means exactly what it says. I cannot be put in jail for an honest debt.
Quitman S. Munn Jr. 1-12-61	it means what it says I can not be put in jail for honest debt.
James Nelson Stepp 1-18-61	Means Just what it said I can not be Put in Jail for a Honest Debt.
Mrs. Paul Norwood (Iva Lou) 1-18-61	It means exactly what it says I cannot be put in jail for an honest debt.
Eddie Rex Bartee 1-30-61	It means what it says I can not be placed in Jail for an honest debt.

[fol. 1627]

Mary Kate Greene 1-30-61	It means exactly what it Says—I can not be placed in Jail for an honest debt.
Olive Poter Jones (Mrs. Grady, Sr.) 7-11-61	It means exactly what it says. I cannot be placed in jail for an honest debt.
James Norris Bailey 1-13-62	It means exactly what it says. I cant not be placed in Jail for an honest Dept.
Minnie Lee Bailey 1-13-62	It means exactly what it says. I cannot be placed in jail for an honest debt.
Hughrene Lower James (Mrs. W. H.) 1-17-62	It means exactly what it says. I can not be pisced in jail for an honest debt.
Dorothy D. Furr 5-5-62	Exactly what it says. I cannot be put in jail for an honest debt.

[fol. 1628] (k) 14 white registrants. All contain minor variation of standard interpretations previous set out. Each contains as one the duties of citizenship, be a "qualified elector."

	Q. 20
Sue Roberts McKnight 12-30-60	To obey all laws, uphold the constitution, and be a qualfied elector.
Billy Buck Ashley 1-3-62	Obey laws uphold constitution, be a qualified elector.
Maxine, Page Johnson (Mrs. James) 1-15-62	abide all law uphole Missipsippi constitution and be a qualified elector.
Mamie Nell Bell (Mrs. John C.) 1-22-62	obey laws. qualified electro
Nos Mae Welter (Mrs. John A.) 1-31-61	Pay all my debts, pay my taxes and be a qualified elector—
Leva Dell Smith 8-23-61	Be qualified elector, uphold the constitution and obey all the laws.
Sarah Holmes Spohrer 1-23-61	obey laws uphold constitution be qualified elector
Claude Talmadge McNeill 1-27-61	Obey all laws Be a qualified elector
Leonard Carl Savell 1-31-61	Obey all the laws, and obey the Constitution, and be a qualified elector.
Virginia Rae Cupstid (Mrs. Dule Lee, Jr.) 1-31-62	Obay all the laws uphold your constitution support the laws of the land be a qualified elector
Carolyn Myers Whittington (Mrs. Bobby Joe) 2-6-61	To obey all laws—uphold the constitution and be a qualified elector
[fol. 1629]	
Janie Ophelia Beasley Granger (Mrs. Herman, Jr.) 2-20-62	abide by all the laws, be a good citizen, be a qualified elector.
Doris Evelyn L. Howard (Mrs. Albert) 9-27-62	duty of a good citizen to obey all laws and to be a qualified elector.
Joyce Louise Hall 12-26-61	Obey all the laws, uphold the Constitution, and be a qualified elector.

[fol. 1630] (3.) Pattern answers were not restricted to Section 30, although few persons received Sections the following are examples of pattern answers.

(a) 23 white registrants with groups of very similar interpretations of Section 22 (double jeopardy), and similar statement of duties and obligations.

	Q. 19	Q. 20
Mary Nell Teasley 1-30-61	A person cannot be tried twice for the same offense.	be a qualified elector. obey all the laws. up hold the constitution.
Robert Wade Weathersby 1-26-62	a Person cannot be tried twice for the same offense	Obey all the laws and be a qualified elector
Nonnie Mae Norman 1-29-62	A person cannot be tried twice for the same offense	obay the laws upon constitrution Register and vote
Doris Marie Parson 12-26-62	A person cannot be tried twice for the same offense	exercise your priviledge of voting obey all the laws.
Johny Lee Parsons 12-26-62	a person can not be tried twice for the same offense	Register and Vote Obey all laws
Hansel Miller Roberts 1-31-62	no persons can be tried twice for the sane offense	aboy all laws off the state off miss and Register and voote
Minnie Belle Price Roberts 1-31-62	No person can be tried twice for the same offense	Obey all the laws of the state register and vote
Kaye Frances Walker Crews 1-30-62	can't be tried twice for the same offense	obey the laws to be a good citizen have to register to Vote
Nell H. Perrett 1-31-62	that a person cannot be tried twice for the same offence	obey the laws, register to vote.
Sara Frances Cupit 1-26-62	No person can be tried twice for the same offence	obey all laws uphold constitution exercise your priviledges of voting

[fol. 1631]

Bertha Faye Starnes Thornton 1-26-62	No person can be tried for the same offense. twice.	To vote and obey all the laws.
Willie Ray McLendon 1-29-62	It means that no person can be tried twice for the same offense	you have to obev the laws & be a qualified Elector
Thomas Eugene Hodges 10-21-60	cannot be tried twice for the same offence	Register and vote Take part in public affairs Support schools & churches Defend free speech & freedom of press

	Q. 19	Q. 20
Ida Bell Perkins 12–17–62	It mean [illegible] can not be tried [illegible] for the same crim[illegible]	I sude Register and Vote. And I sudede uphold law an order and take in public affairs, also I sude support school and churches
John Mack Smith 3–30–62	no person shall be tryed twice for the same crime.	obey the laws set forth by the Gov't. Be a qualified elector
Shelby Gene James 1–30–62	It means a person canot be tried twice for the same crime.	you have to obey all laws up hold constitution to Register and to vote, to.
Iva Viola Smith 1–30–62	No person can be tried twice for the same crime.	Obey all the laws of my state, and country. and be a qualified electro.
Margaret J. Jasper 1–30–62	No person can not be covicted for the same crime twice	Obey all the laws of the United States constitution.
Norman C. Jasper 1–30–62	You cannot trited for the same crime twice	Obey all laws of my state, and constitution
Callie Smith (Miss) 1–30–62	No person can be tried for the same crime twice	Obay all the laws of my State and country and be a qualified elector

[fol. 1632]

	Q. 19	Q. 20
Vance H. Patterson 3–24–62	I can not be convicted of the same crime twice.	oner my flage and obey all laws
Patricia Ann Russum 4–23–62	A person cannot be tried for the same crime twice.	A citizen must obey all laws stated in the constitution; must be a qualified elector, and has the right to vote for the party or person of his choice. He is obligated to uphold the constitution.
William Thomas Finley 4–23–62	That no person can be convicted of the same crime twice.	My duties and obligations as a citizen should be to uphold the laws provide and to take part in all elections.

[fol. 1633] (b) 4 White Registrants who received Section 9, "The military shall be in strict subordination to the civil power."

	Q. 19	Q. 20
Margi M. Johnson 3–15–62	The civilian authorities always out rank the military	register & vote Take part in public affairs uphold law & order support schools & churches uphold & defend free spe ach & free press.

	Q. 19	Q. 20
William Duncan Day 3-15-62	The civil authorities always out rank the military	register and vote take part in public affairs support schools and churches uphold and defend free speech and press.
Albert N. Cheroni 4-10-62	Civilian Authority always out ranks the Military	Register and then Vote. I Should take part in public affairs. I Should support schools and churches and uphold law and order, and defend free speach and free press.
Lou Alice Cheroni 4-10-62	Civilian authority always out ranks the Military	Register and then Vote. I should take part in public affairs. I should support schools and churches and uphold law and order; and defend free speach and free press.

[fol. 1634] c. Grading.

1. The interpretations of the following white registrants indicate that the applicant was registered without his form having been graded. The sections assigned to each applicant are set forth above his name, date of application and interpretation.

Section 20

No person shall be elected or appointed to office in this state for life or during good behavior, but the term of all officers shall be for some specified period.

Donald Wayne Cooper 6-26-61	Each district, county, and state official is elected by majority vote.

Section 22

No person's life or liberty shall be twice placed in jeopardy for the same offense; but there must be an actual acquittal or conviction on the merits to bar another prosecution.

Catherine Ann Parsons Patterson 3-24-62	I must be acquitted before I can be tried for the same crime twice.

Section 25

No person shall be debarred from prosecuting or defending any civil cause for or against him or herself, before any tribunal in the state, by him or herself, or counsel, or both.

Robert Wesley Weathersby 2-7-62	I can by self own causes in any suit.
Jacob Hardy Twiner 12-29-62	It gives the accused the right to be heard by himself or counsel.

[fol. 1635] The following six applicants all received Section 30.

Section 30

There shall be no imprisonment for debt.

Cecil Paul Brent 6-6-60	You can't be put in jail for enoughtomeas debt.
Adrian Edward DeYoung 10-11-60	Debts incurred by a ferm may not be penalized by a prison sentence.
Mary Katherine Cline 1-19-62	I must pay all my debt.
Girer Coper 4-7-62	I must Pay all Debts
Ethel Mae Griffin 5-21-62	I must pay all my debts.
Earl Clarence Arnold 10-8-62	all debts must be paid.

[fol. 1636] Part III

The Government believes that the following Negro citizens of Copiah County who filled out application forms were denied registration because of Section 244 of the Mississippi Constitution:

15010	Georgia Mae Dodds	(Between 1955 and 1957)
	Edith Callahan	(Between 1955 and 1957)
15007	Odessa Mae Crisler	(1-30-62)
15001	Frank Alexander	(1-30-62)

The application forms of the first two of the above Negro citizens were not preserved by the Circuit Clerk. Where the applicant has been interviewed by the Department of Justice, the number assigned that person is set forth to the left of his name.

[fol. 1637] Franklin County #48

Part I

A

The following Negro citizen was not permitted to register to vote because of the good moral character test. He applied to register to vote at the Circuit Clerk's office in Franklin County.

19002	1- -63 Rejected Dean, D.C.	He was rejected because of a conviction for assault and battery.

B

The following Negro citizen of Franklin County was not permitted to apply to register to vote. This occurred at the Circuit Clerk's office in Franklin County.

19008	About 1958 Rejected Foster	He was registered before the war (II). Some years after the war he tried to vote, but was told that this name was "off the books". He went to see Mrs. Foster (Clerk) about this and was told that "It could be for many reasons", and that she "didn't know" how he could get back on. He returned again and was told by Mrs. Foster, "I can't help you". Has not been back since.

[fol. 1638] **Hinds #49**

Part I

A

The following Negro citizens of Hinds County were delayed in applying to register to vote. All events described below occurred at the Circuit Clerk's office in Hinds County.

25038	June, 1963 Delay Accepted Deputy Registrar	She applied for registration in June, 1963. This was second attempt to register. Had to wait from 9:00 A.M. until 11:30 A.M. before getting in to register. Only 3 or 4 Negroes allowed to register at a time. Whites allowed to register without waiting. When she did get in to apply she filled out a form and was registered.
25013	6/26/63 Delay Accepted Deputy Registrar	Went to register on about 6/26/63, after having been rejected on previous two days. Was given form to fill out and section 127 to interpret. Passed. Had to wait over an hour to register.
25044	7/1/63 Delay Deputy Registrar	Went to register on 7/1/63. Arrived at 1:00 P.M. but left after waiting until 4:40 P.M., when it became apparent she would not get in that day.
25020	about 7/1/63 Delay Rejected Deputy Registrar	Went to register on about July 1, 1963. After waiting about one hour, finally got in. Was given form to fill out and section 27 to interpret. Did not pass. Although there were vacant chairs available, only 4 Negroes were allowed to register at a time.

25031	7/1/63 Delay Rejected McLeod- Dep. Reg.	On July 1, 1963 he went to register with Annie Bell Alexander and Lavone Blackwell at about 1:00. Many Negroes were waiting in line to register. They were only taking 4 at a time. White people did not have to wait in line. He finally got to apply about 20 minutes to 5. He was given sec. 126 to interpret and after Mr. McLeod questioned him about his interpretation he was rejected.

[fol. 1639]

25033	7/1/63 Delay Deputy Registrar	Appeared for second attempt to register on 7/1/63, at 4:00 P.M. Was not able to get in to register before office closed at 5:00 P.M.
25036	7/1/63 Delay Rejected Deputy Registrar	Attempted to register on 7/1/63. Had to wait from 1:20 to 3:40 before getting chance to register, was given a form to fill out and section to interpret. Was told her interpretation incorrect, and rejected.
25036	7/2/63 Delay Rejected Deputy Registrar	Applied for second time on 7/2/63. Had to wait from 1:00 P.M. until 3:45 P.M. before getting in to register. Was given form to fill out and section to interpret. Was told answer wrong, and rejected.
25031	7/2/63 Delay Accepted Deputy Registrar	He made his second attempt to register on 7/2/63. He went to register with Ann Alexander and Angelson Ensley at about 11 A.M. Many Negroes were waiting in line to register. They were only taking 4 at a time. White people did not have to wait in line to register. He finally got to apply around 3:30. He was given sec. 139 to interpret and then was registered.

25000	7/2/63 Delay Rejected Deputy Registrar	Went to registration office on July 2, 1963 at 3:00 P.M., and waited until 4:35, when Registrar said they weren't taking any more that day. Same thing occurred the next day. Went back July 5 and after short wait was given application and section 127 to interpret and was rejected.
25001	7/2/63 Delay Accepted Deputy Registrar	Went to registrar's office July 2, 1963 at 11:00 A.M., with two other persons. About 30 other people waiting. Did not get in until 4:00 P.M. Given section 92 to interpret by Deputy Registrar. Deputy said her answer was "OK", and gave her a slip.

[fol. 1640]

25002	7/2/63 Delay Rejected Deputy Registrar	Applied to register once on 7/2/63, and twice on 7/5/63; rejected on all three occasions, had to wait in line for long period of time while whites who came after her got right in.
25004	7/2/63 Delay Deputy Registrar	Went down with wife to register on 7/2/63. Waited from 2:00 P.M. until 5:00 P.M., but was not able to get in. They were only processing four Negroes at a time. Observed whites being processed without having to wait.
25006	7/2/63 Delay Accepted Deputy Registrar	Went to register on 7/2/63. Waited from 1:00 P.M. until 3:30 P.M. before getting form. Was given section 92 to interpret. Was accepted on this attempt.
25012	7/2/63 Delay Rejected Deputy Registrar	Went to register on 7/2/63, at about 10:00 P.M. Had to wait in line until about 1:45 P.M. before attempting to register. Was given form to fill out and section 126 to interpret. Was rejected.

25019	7/3/63 Delay Rejected Deputy	Third attempt to register was on 7/3/63. Was given form to fill out and section 63 to interpret. Was rejected. Had to wait from 9:30 A.M. until 1:00 P.M. before getting in to apply.
25004	7/3/63 Delay Accepted Deputy Registrar	Went down to register with wife on 7/2/63. Waited from 2:00 P.M. until 5:00 P.M. but did not get in. Went back the following day, was given form and section 73 to interpret. Passed on this attempt.
25017	7/3/63 Delay Accepted Deputy Registrar	Went to register on July 3, 1963. Waited from 8:30 to 11:40 before getting in to register. Filled out form and passed.

[fol. 1641]

25040	7/3/63 Delay Deputy	Went for second attempt to register on 7/3/63. Arrived at 1:30 but did not get in because office closed at 5:00 P.M. Whites who came later were allowed to enter and register without waiting.
25005	7/3/63 Delay Rejected Deputy Registrar	Went to register at 10:00 A.M. on 3 July 1963. Waited in line until 4:30 P.M. They only allowed a few Negroes in the office at one time. Was given form to fill out and section 20 to interpret. Was told by Deputy Registrar he "missed it by one word."
25010	7/3/63 Delay Rejected Deputy Registrar	Went to register on July 3, 1963, at 9 A.M. Waited in line until 12:15 before getting in to register. They took 4 Negroes at a time. Was given form to fill out and section 83 to interpret. Was told by Deputy Registrar that she did not pass.

25011	7/3/63 Delay Accepted Deputy Registrar	Went to register on July 3, 1963 at 9:00 A.M. Waited until 12:15 to get in to register. They were allowing only 4 Negroes to register at one time, although whites who came later were allowed to go in without waiting. Was given a form to fill out, and section 73 to interpret. Was accepted.
25039	7/5/63 Delay Rejected Deputy Registrar	Applied for registration for first time on 7/5/63. Was given form to fill out and section to interpret. Was rejected. Was told could not re-apply until after the August 6 election.
25025	7/5/63 Delay Rejected Deputy Registrar	On second attempt to register was given form to fill out and section 144 to interpret. Deputy Registrar told her she did not pass, and not to return until after August 5th.

[fol. 1642]

25037	7/5/63 Delay Deputy Registrar	Went down to register on 7/5/63 with 4 other Negro women. Was told could not register until after the Aug. 6 primary election.
25008	7/8/63 Delay Deputy Registrar	Went to register on July 8, 1963, but was told by Deputy Registrar that he could not register because the books were closed.
25005	7/10/63 Delay	Went down to register on July 10, 1963. The door was locked and he did not get to register. The office was closed for registration.
25016	7/15/63 Delay Deputy Registrar	Went down to register on 7/15/63, at 9:30 A.M., with 4 other Negroes. Was told by Clerk inside office that she could not register because the books were closed until after the primary election.

25018	7/15/63 Delay Deputy Registrar	Went to register on 7/15/63 at 9:30 A.M. with 4 other persons. Was told by Clerk at the counter that she would not be able to register until after the primary election, because the books were closed until then.
25022	7/15/63 Delay Deputy Registrar	On 7/15/63 took four Negro women to the Clerk's office to register. Group was told by lady in office that the books were closed until after the primary election on August 6, and no one could register until after that time.
25030	7/15/63 Delay Deputy Registrar	Went to register on 7/15/63 with 4 other Negro women. Was told by lady behind counter that she could not register until after the primary election on August 6 because the books were closed until then.

[fol. 1643] Holmes #50

Part I

A

The following Negro citizens of Holmes County were not permitted to pay poll taxes. The events described below occurred in the Sheriff's office in Holmes County.

26021	1955 Sheriff Byrd	Sheriff Byrd permitted him to pay poll tax but advised him not to pay for his own safety.
26026	1952-1956 Sh. Byrd	Tried to pay his poll tax and was told by the sheriff that he didn't want Negroes paying their poll tax and registering.
26043	1956 Sheriff Smith	Went to the courthouse to pay his property tax; after doing so he attempted to pay his poll tax; sheriff would not let him pay.

26054	1956 Sh. Smith	Went to the sheriff's office to pay his property tax; attempted to pay his poll tax; sheriff told him he couldn't pay.
26056	1956	Stopped paying his poll tax after he heard that the sheriff had refused to let Isadore Montgomery and Ralthus Hayes pay theirs.
26088	Dec. 1956 Sh. Smith	Went to the county courthouse to pay taxes; paid his property tax and asked to pay his poll tax; was told by the clerk and the sheriff that Negroes would not be allowed to pay poll tax.
26087	Jan. or Feb. 1958	Went to the county courthouse to pay his taxes; asked to pay his poll tax and was told by the female clerk that "the books were closed."
26032	1959 or 1960	Was told the books weren't open when he tried to pay his poll tax after paying his property tax.
26021	1961 Sh. Smith	Went to sheriff's office to pay his property tax; paid his property tax and was told to see the Deputy Sheriff to pay his poll tax; Deputy Sheriff cursed him and told him to get out.

[fol. 1644]

26007	1963	He has not tried to pay his poll tax because he was aware of the difficulties encountered by other Negroes attempting to pay theirs (i.e., Cesar Leflore, Bennie Price, Isadore Montgomery).

B

The following Negro citizens of Holmes County were delayed in their attempts to register to vote in Holmes County. The events described below occurred at the Holmes County Courthouse.

26090	4-9-63 Delayed McClellan—R Smith— Dep. Sh.	Between 9 and 10 A.M., went to the county courthouse to register with a group of 12 or 13 other Negroes; were told to disperse and wait under a tree until called; Sheriff took pictures of them as they assembled under the tree; was called into the office at or about 3 P.M.; was given a form and section 16 to copy and interpret; filled out form and was told that he would hear in 30 days.
26082	4-9-63 Delayed McClellan—R Smith— Dep. Sh.	Went to the courthouse to register with a group of 12 or 13 other Negroes; was told to disperse and wait under a tree until called; waited the remainder of that day and left.
26042	4-9-63 Delayed McClellan—R Smith— Dep. Sh.	Went to county courthouse to register with a group of 12 or 13 Negroes; was told to disperse and wait under a tree to be called into the office; waited remainder of that day; was not called and went home.
26010	4-9, 10-63 Delayed McClellan—R Smith— Dep. Sh.	Went to the registrar's office with a group of 12 or 13 other Negroes; the group was told to disperse and wait under a tree; waited remainder of that day and returned the following day; was called into the office on the 2nd day; was given an application form to complete and section 7 of the constitution to copy and interpret; she completed the form and was told that she would be notified in 30 days.

[fol. 1645] Part I

B

26005	4-9, 10-63 Delayed McClellan-R Smith- Dep. Sh.	Went to registrar's office with a group of 12-13 other Negroes to attempt to register; they were told by the sheriff to disperse and assemble under a tree; waited under the tree the remainder of the day while 2 of the group were called into the office (Mr. Turnbow and Mr. Wesley); returned the following day and waited under the tree until early afternoon when she was called into the office; was asked a variety of personal questions by the Clerk and was given an application form to fill out; completed form and left.
26006	4-9, 10, 11-63 Delayed McClellan-R Smith- Dep. Sh.	Went to registrar's office with a group of 12-13 other Negroes to attempt to register; they were told by the sheriff to disperse and assemble under a tree; waited under the tree the remainder of that day and all of the following day; was called into the office on the third day; he was asked a variety of personal questions and then given a form to fill out; he did so and left.
26009	4-9, 10, 11, 12-63 Delayed McClellan-R Smith- Dep. Sh.	Went to register with a group of 12 or 13 other Negroes; was told to disperse and wait under a tree; waited the remainder of that day; returned and waited under the tree on the second day and third day and was called into the office on the afternoon of the fourth day; Clerk asked him a variety of personal questions and gave him a form to fill out; he completed it and left.

26021	4-10-63 Delayed McClellan-R	At or about 10 A.M. went to the county courthouse with 12 or 13 other Negroes to register; was told to disperse and wait under a tree until called; waited the remainder of that day and returned the following day at or about 9 A.M., was called into the office around 11:30 A.M. and was told it was time for lunch and to come back at 1 P.M.; he did so; filled out the form and left.

[fol. 1646]

26060	4-12-63 Delayed McClellan-R	Went to the county courthouse to register with Mr. O. Mitchell at or about 8:30 A.M.; was told to go under a tree and wait until called; was called into the office at or about 11 A.M.; was asked a variety of personal questions and then given a form and section 32 to copy and interpret.
26083	4-12-63 Delayed McClellan-R	Went to county courthouse to register with Mr. C. Lacey; arrived at or about 8:30 A.M.; Mr. Mitchell, Mr. Redmond and Mr. Kennedy were already there waiting under a tree to be called; waited until he was called sometime that afternoon; was given a form and section of the Constitution to copy and interpret; filled out the form and was told he would be notified of results in 30 days.
26082	4-12-63 Delayed McClellan-R Smith- Dep. Sh.	Went to the courthouse to register; was called into the office and told to go directly home after filling out form; completed form and left.
26042	4-12-63 Delayed McClellan-R	Went to county courthouse to register; waited under a tree until called into the office; completed form and left.

26077	4-12-63 Delayed McClellan-R	Went to the county courthouse to register with his wife; arrived at or about 11 A.M. and joined Mr. Lacy, Mr. Kennedy, and Mr. Square who were already there gathered under a tree waiting to be called into the office; was called into the office at or about 4:40 P.M.; was told that he would have to fill out the form in 20 minutes or come back some other time; decided to come back some other time.

[fol. 1647]

26018	4-15-63 Delayed McClellan-R	Went to the county courthouse to register with his daughter, Mrs. J. Lovie; arrived at or about 8:30 A.M. and waited to be called into the office; Mr. Washington, Square and McCreary arrived shortly thereafter; was called into the office at or about 4 P.M.; was asked a lot of questions and given a form and section 76 to copy and interpret.
26012	4-16-63 Delayed McClellan-R	Went to the county courthouse to register with Mr. P. K. Delaney; Mr. W. J. Burns was already there waiting under a tree; waited under the tree all morning and afternoon; was told to go into the office by a deputy sheriff at or about 4 P.M.; was given a form and section 20 of the Constitution to copy and interpret after being asked a variety of questions by the Clerk; filled out form and left.

26019	4-16-63 Delayed McClellan-R	Went to county courthouse to register with her daughter-in-law, Mrs. C. Hayes; arrived at or about 9 A.M. and went directly under the tree to wait to be called into the office; someone came out and looked at them shortly after they arrived but she was not called into the office until early afternoon; she was given an application form and section 28 to copy and interpret. She handed form to clerk and was told she would know in 30 days.
26016	4-16-63 Delayed McClellan-R Smith- Dep. Sh.	Went to county courthouse to register with a group of 12 or 13 other Negroes; were told to disperse and assemble under a tree; picture was taken by Sheriff when he got to the tree; waited under the tree the remainder of that day; all of the next, and was called into the office at or about 4 P.M. on the third day; was asked a lot of questions and given a form and section 76 of the Constitution to copy and interpret.

[fol. 1648]

26017	4-16-63 Delayed McClellan-R	Went to county courthouse to register with mother-in-law, Mrs. Emmett Hayes; arrived at or about 9 A.M. and were observed by the Sheriff; were joined by Mr. and Mrs. P. K. Delaney and Mr. Robert Head; was called into the office at or about 11 A.M.; was told to wait for Circuit Clerk who arrived at or about 11:30 A.M.; was told to come back at 1 P.M.; returned at 1 P.M. and was given a form and section 30 to copy and interpret; was asked a lot of questions while filling out form; completed form and was told that she would know results in 30 days.

26003	4-17-63 Delayed McClellan-R	Went to the registrar's office alone at 8 A.M. and asked for an application to register; was told to wait outside under a tree until called; he did so and was joined there by Mrs. Nancy Epps and Mr. P. K. Delaney; he waited until 3:30 p.m. without being called and then left; he returned the following morning and again waited under the tree until he was called into the office at or about 3 P.M.; he was asked personal questions and then given a form to fill out; he completed the form and left after being informed that he would be notified of results.
26077	4-18-63 Delayed McClellan-R	Went to the courthouse to register with Mr. Square, Mr. E. Hayes, and Mrs. J. Louie; waited under tree until called into the office some time in the afternoon; was given a form and section 1 to copy and interpret; handed in form and left.
26081	4-23-63 Delayed McClellan-R	Went to county courthouse to register with Mr. Hoskins and Mrs. Howard; arrived at or about 10 A.M. and waited under a tree until called into the office sometime in the afternoon; was given a form and a section of the Constitution to copy and interpret; filled it in and then left.

[fol. 1649]

26085	April, 1963 Delayed McClellan—R	Went to the county courthouse to register with Mrs. Wallace. Registrar asked him a variety of personal questions before permitting him to fill out form; told him he would have to fill out the form in the half hour remaining before lunch; came back after lunch and filled out form.

26085	April, 1963 Delayed McClellan—R	Went to courthouse to register with Henry Thomas, Estelle Cade, and her sister; seven or eight other Negroes were present in the clerk's office; sheriff told them not to loiter in the hall and to go outside and wait under a tree for their turn to go into the office; it was raining and he left.
26069	April, 1963 Delayed McClellan—R	Went to the county courthouse to register on the same day that a group of 10 or 12 other Negroes were attempting to register; he joined this group waiting under a tree to be called at or about 1 P.M. He waited there the afternoon of that day; most of the next day and part of the third day; in the afternoon of the third day he asked the Sheriff and a reporter to stop taking his picture; the Sheriff told him to stop talking; he left and did not return.
26022	April, 1963 Delayed McClellan—R	Went to the courthouse to register; waited under a tree to be called from 8:30 A.M. to about 4 P.M.
26023	April, 1963 Delayed McClellan—R	Went to courthouse to register; waited under tree until called, waited from 9 A.M. until 2:30 or 3:00 P.M. when she was called into the office; was given a form and a section of the Constitution to interpret; filled in the form and returned it; was told she would know in 30 days.

[fol. 1650]

26029	April, 1963 Delayed McClellan—R	Went to the courthouse to register with Mr. S. Redmond; arrived at or about 9 A.M.; waited under a tree until he was called into the office sometime in the afternoon; was given a form and a section of the Constitution to copy and interpret; handed form to Clerk and was told that he would know in 25 days.

26030	April, 1963 Delayed McClellan—R	Went to the county courthouse to register with Mr. Brandon; arrived at or about 9 A.M.; Mr. Kennedy and Mr. Pitchford were already there under a tree waiting to be called into the office; was called into the office at or about 11 A.M.; was asked a lot of questions and then given form to fill out; at 11:30 he was told to come back at 1 P.M.; he came back at 1 P.M. and was told to stand in the hall until the Clerk came in; he completed the form after the Clerk returned, handed it in, and was told he would know in 30 days.
26036	April, 1963 Delayed McClellan—R	At or about 8:30 A.M. went to county courthouse to register with Mr. Washington and another Negro. They were told to wait under tree until called; was called into the office sometime in the early afternoon; was given a form and section 1 to copy and interpret.
26084	April or May, 1963 Delayed McClellan—R	Went to the county courthouse to register with his wife and Mr. Head; waited until 5 P.M. and went home; returned the following morning with Mrs. Epps; was called into the office at or about 2 P.M., was given a form and section to copy and interpret; was told he would hear from the Clerk in 30 days.
26086	April or May, 1963 McClellan—R	Went to the county courthouse to register with Mr. Delaney; arrived at or about 9:30 A.M. and waited under a tree to be called; was called into the registrar's office at or about 4 P.M. was told he would be told results in 30 days.

[fol. 1651] Leake Co. #51

Part I

A

The following Negro citizens of Leake County filled out application forms and were told the Board would have to pass on their forms. The events described below occurred in the Circuit Clerk's office in Leake County.

40014	Feb. 1959 Delayed Rejected Horn—R	Went to Clerk's office with her husband. Interpreted Section of Mississippi Constitution. Horn told her a Board must pass on her application. Sometime later, she checked back and Horn told her she failed.
40015	1/31/61 Delayed Told Rejected Form Rejected Name on Reg. Books Collier—R	Applied on January 31, 1961 and received Section 241 to interpret. Registrar Collier was helpful in explaining form. Left question 20 (duties and obligations) blank. Collier told him "Board" must meet to determine if he passed. On April 20, 1961, secretary in Collier's office told him he failed. "Should have signed" written on form, but he did sign. Form marked passed and his name is on Registration Book for May 3, 1962.
40010	3/6/61 Delayed Accepted Collier—R	He went to office of Registrar to find out why he could not vote in the 1960 election. Collier said the law had been changed and he must pass a test. He completed a form and received Section 241 to interpret. Collier told him the "Board" would have to act on his application. He checked back three times and could never learn whether or not he passed. In early 1962, Collier told him he passed.

40009	7/28/61 Delayed Rejected Collier—R	Went to register with Mrs. McDonald. He received Section 241 to copy and interpret. Collier asked him orally how you vote and he said "secret ballot". Collier told him a Board would meet to decide if he passed or failed and that there was no election till next year anyway.

[fol. 1652]

40008	7/29/61 Delayed Rejected Collier—R	Went to register with Mrs. Winson Hudson. Received Section 241 to interpret. She was told that the Board must consider their applications and would not meet until April 1962. In April, 1962, she returned and was told that the Board was working on her application. On October 27, 1962, she was told by Mr. Collier that he was unable to locate her form.
40011	7/29/61 Delayed Rejected Collier—R	She went to apply with Mrs. Dovie Hudson. She received Section 241 to interpret. She did not sign the form because she was waiting for Mr. Collier to do so. They were told there would be no action on the form until the Board meets in April 1962. In April, 1962, they returned and Mrs. Collier told them their applications were being worked on. On October 9, 1962, she was told she failed.
40005	5/8/62 Delayed Rejected Collier—R	She went with Mrs. Docia Jackson. Collier gave her Section 241 to interpret. They were not told whether or not they passed, but were told someone would let them know; she has not been informed of the result.

[fol. 1653] Leake Co. #51

Part I

B

A re-registration was begun in Leake County in 1948. Many white persons were apparently re-registered by leaving their names copied into the new registration books. The following Negro citizens of Leake County have experienced difficulty in determining if they are currently registered to vote in Leake County. The events described below occurred in the Circuit Clerk's office in Leake County.

40016	About 1956 or 1957 Horn—R	In 1956 or 1957, he tried to vote at Free Trade Precinct in a cotton quota farmer's election and was not allowed to do so because his name was not on the precinct poll book. He went to see Registrar Horn in Carthage, and Horn told him he was in Ebenezer precinct but that his name was not on the poll book there either.
40016	About 1958 Horn—R	On about 1958, he tried again to vote in the cotton quota election. Unknown election officials told him his name was not on the precinct poll book. He again went to see Registrar Horn, who never found his name and never told him whether he was registered or not.
40016	1960 and 1961 Not told if he could vote	In 1960 and 1961, came to ask Collier if his name was on the poll book. On each occasion, Collier said he could not find the book.
40024	About August 1960 Told name not on book Collier—R	He went to see Mr. Collier before the 1960 election to determine if his name was on the Precinct Poll Book. Mr. Collier said it was not previously registered in Leake County.

40002	Nov. 1960 Not told if he could vote Collier—R	Collier told him, in response to an inquiry that his name was on the "big" book but not the "small" book. He would not directly respond to the question whether he could vote in the November 1960 election.

[fol. 1654] Leake County #51

Part II

Application Forms

1. Number of Application Forms

The total number of forms which were acted on at the time of photographing on December 13, 1962, is as follows:

	Accepted	Rejected	Not Graded
White 142	133	4	5
Negro 27*	12	15	

* Of the accepted Negro applicants at least six were not told they had passed; one was told he had failed; three initially marked incomplete for lack of signature and were subsequently placed on the registration book.

2. Periods Which Forms Cover

a) January 2, 1960—September 5, 1961

This period covers from the date of the first form to the date (Sept. 5, 1961). Mr. Collier was notified by the FBI of an investigation into discrimination in registration and voting in Leake Courts.

b) Period: September 5, 1961—December 13, 1962.

Period from date Collier notified of investigation to date of photographing.

[fol. 1655] 3. Analysis of Forms

a. Selection of Constitution sections

(1) January 2, 1960–September 5, 1961

Section	White	Negro	Number of Lines
129	3	0	4
133	2	0	9
240	36	1	1
241	0	10	17
243	1	0	10
244	1	0	21
249	1	0	6
251	2	0	5

During this period 91% of the Negroes, and no white received section 241. 78% of the whites and one Negro received section 240.

[fol. 1656]

(2) September 6, 1961—December 13, 1962

Section	White	Negro	Number of Lines
17	1	0	6
73	1	0	2
98	1	0	4
102	2	0	6
117	1	1	3
119	2	0	3
122	2	0	3
128	2	0	3
129	7	0	4
133	10	0	9
173	0	1	5
208	2	0	5
214	2	0	3
217	2	0	4
226	2	0	4
240	33	4	1
241	5	7	17
243	5	2	10
244	1	0	21
249	1	0	6

[fol. 1657]

Section	White	Negro	Number of Lines
250	3	0	2
251	5	0	6
252	4	0	6
260	1	0	9
267	1	0	4

b. Assistance to white Applicants

(1) Constitutional interpretation test

Section 240 of the Mississippi Constitution of Mississippi reads as follows:

All elections of the people shall be by ballot,

This section was assigned to 69 white applicants and five Negroes. Of these, 61 white applicants (88%) used the word "secret" in their interpretation.

None of the four Negroes used the word secret in their interpretation. White applicants wrote interpretation, identical or substantially identical to those of other white applicants. In many instances, persons with the same interpretation registered on the same day. In addition, different standard answers appear during different periods.

(a) The following is a summary of the standard interpretations of white persons receiving section 240: (Notations are also made of similar statements of duties and obligations, but these are dealt with in greater detail in the next section)

[fol. 1658] The following eleven white accepted applicants wrote the following verbatim interpretation of Section 240:

"All elections shall be by secret ballot."

(Ten of the eleven had duties and obligations identical to those of several others in the group. See below)

Name	Date
Hubert Lavon Moore	1-29-60
Edward Lane Upton	3-19-60
Lady Ann Scruggs	6-25-60
Marilyn Deloris Massey	7-8-60
Ruth Calhoun Wagner	7-14-60
Webbye Sue Poale	7-16-60
Otis Withers	8-9-60
Thomas F. Crane	12-1-61
Raymond L. Pigg	12-16-61
James C. Fortune	12-16-61
Dequency Townsend, Jr.	1-25-62

The following four accepted white applicants have substantially identical interpretation of Section 240:

"All voting in all elections by the people shall be held by secret ballot."

(The last three have closely similar statements of duties and obligations). The last applied in succession.

Name	Date
Janet Grace Denson	4-5-60
James Roberts Allen	3-30-62
Mrs. Virginia Vines	4-5-62
Alice Lillian Mills	4-14-62

[fol. 1659] The following four accepted white applicants have substantially identical interpretations of Section 240, within one or two words of the eleven who wrote:

"All elections shall be by secret ballot."

(Their statements of duties and obligations are similar to those of at least one other member of the group).

Name	Date
Betty Jean Donald	10-14-60
Lailon Wright Dorsey	10-25-60
Wayne B. Sherman	6-17-61
Welton Freeny	9-30-61

The following two white accepted applicants wrote the following verbatim interpretation of Section 240:

"All election are by secret ballot."

(Their statements of duties and obligations are also identical.)

Name	Date
Betty Lynn Wooten	8-23-60
Leonard Colbert Crowe Jr.	9-10-60

The following two accepted white applicants have identical interpretations of Section 240:

"All elections shall be determined by secret ballot."

[fol. 1660] (Their statements of duties and obligations are also identical.)

Name	Date
Kenneth Alan Nester	4-19-60
Jimmie Dell Arthur	4-23-60

The following three accepted white applicants wrote the following identical interpretation of Section 240:

"All voting shall be done by secret ballot."

Their statements of duties and obligations are also verbatim. These persons filed successive application forms.

Name	Date
Peggy Pierce	2-2-62
Joseph F. Adams	2-12-62
Ruthie Waudine Moorehead	3-2-62

The following 12 white applicants wrote virtually identical interpretations of Section 240, all within one or two words of the following:

"All voting shall be done by secret ballot."

The first seven are verbatim. (Several also have substantially identical statements of duties and obligations). All except one (Eric Ouilahert) passed.

[fol. 1661]

Name	Date
Carolyn M. Payne	7-6-61
Syble Linda Jones	7-25-61
Jimmie Ruth Freeny	1-24-61
Thomas W. Sterling Jr.	1-6-61
Martin R. Scrinner	1-27-62
Patrick Henry Kelly	5-4-62

Johnny R. Boyd	7-20-62
Mrs. Martin Scrinner	1-30-62
Mrs. Jan Jenkins Gardner	2-1-62
Lula Haley Wright	1-23-61
Bobbie E. Pigg	9-9-61
Edward Franklin Myers	3-24-62
Eric Ouilahert	10-5-62

The following four white accepted applicants wrote the following verbatim interpretation of Section 240:

"All voting is done by secret ballot.

(Their statements of duties and obligations are also verbatim). All registered within 11 days of each other, two on the same day."

Name	Date
Jo Ann Steen	1-17-61
Wilma Lavelle Horn	1-25-61
Carolyn Joy Nazary	1-25-61
Mrs. T. W. Starling Jr.	1-28-61

The following three accepted white applicants have the following verbatim interpretation of Section 240:

"The election held shall be by secret ballot of the people."

(Two who registered on the same day, also have identical statements of duties and obligations, and the statement of the third is similar.)

Name	Date
Joe Hugh Ratcliff	1-29-62
Allen Wright Dorsey	1-29-62
Paul Wright	1-31-62

[fol. 1662] The following three accepted white applicants wrote identical interpretation of Section 240:

"Elections are carried on by the people of said state and are voted on secretly by form of ballot."

(The statements of duties and obligations are also identical.) The first two registered on the same day and the third was the next applicant in Leake County and applied one week later.

Name	Date
Marcie Aline Matthews	5-31-62
Jerry Wade Matthews	5-31-62
Bobby Bryant Chamble	6-6-62

The following three white accepted applicants wrote almost verbatim interpretation of Section 240, as follows:

> "All elections shall be determined by secret, and not oral balloting."

Their statements of duties and obligations are substantially similar.

Name	Date
Carl Baxter Cooper	3-19-60
Jerry Knox Richardson	4-16-60
Elvin Lynn Montgomery	6-16-60

The following two accepted white applicants wrote substantially identical interpretations of Section 240:

> [fol. 1663] "All voting at such elections shall be by secret ballot by registered voters."

They registered within three weeks of one another. Their statements of duties and obligations are also almost identical.

Name	Date
Mary J. Richardson	12-29-61
Katherine A. Sudduth	1-18-62

Five of the following seven accepted white applicants wrote interpretations of Section 240 which, while not identical to that of any other applicant, are substantially similar to those of many others. The last two simply used the word "secret" in their explanations. All of their statements of duties and obligations are similar to those of other applicants.

Name	Date
Mary Lou Ware	10-21-60
Jewel Estell Phillips	10-14-60
Sue Gunter	9-21-60
Robert S. Donald	12-28-61
Larry Claude Wallace	5-5-62
Nelba June Fisher	10-28-60
Judy Beth Hall Tucker	11-2-60

(b) Other Sections

Accepted white applicants wrote standard interpretations of other Sections of the Constitution, as follows:

The following two white applicants have substantially identical interpretations of Section 133. Both were acepted.

[fol. 1664]

Name	Date
Jackye N. Staton	1-28-61
Peggy Lynn Thaggard	6-22-62

The following two accepted white applicants who applied on the same day have identical interpretations of Section 102. (There statements of duties of citizenship were also identical.)

Name	Date
Jimmy Clyde Payne Sr.	7-13-62
Mary Frances Payne	7-13-62

The first three of the following four white accepted applicants have substantially identical interpretations of Section 129, and all four of them use the expression "untie the votes". (Three have identical statements of duties and obligations and the fourth is very similar)

Name	Date
Imogene Caldwell	1-8-62
Hilda R. Scott	1-29-62
Wayne E. Scott	1-29-62
Norman Everett Moore	10-26-62

Four of the following white accepted applicants, all of whom applied within four days of each other, wrote this verbatim statement of duties and obligations:

"The People shall have the right of election of their leaders."

[fol. 1665]

Name	Date
Martin R. Scrinner	1-27-62
Mrs. Martin Scrinner	1-30-62
Paul Wright	1-31-62
Jan Jenkins Gardner	2-1-62

The following two accepted white applicants, who applied on the same day, wrote the following statement of duties and obligations:

"The citizens of the nation shall have the right to elect the leaders by their own choice by ballot, and should feel it their duty to do so."

Name	Date
Joe Hugh Ratcliff	1-29-62
Allen Wright Dorsey	1-29-62

The following four accepted white applicants wrote this verbatim statement of the duties and obligations of citizenship:

"To be as good a citizen as possible, and to always uphold right in everything."

The first two applied on the same day and the third, who applied a week later, was the next applicant.

Name	Date
Marcie Aline Matthews	5-31-62
Jerry Wade Matthews	5-31-62
Bobby Bryant Chamble	6-6-62
Mary J. Moore	5-3-62

[fol. 1666] The following two white applicants wrote this verbatim statement of duties of citizenship:

"Serve on jury, pay taxes, obey laws, uphold Constitution."

They applied within a few days of one another, with no intervening applicants.

Name	Date
Kenneth Alan Nester	4-19-60
Jimmie Dell Arthur	4-23-62

The following eight white accepted applicants wrote the following verbatim statement of duties and obligations:

"Obey all laws."

Two applied on the same day and five of them were successive applicants (i.e. no other applicant applied between them)

Name	Date
Hubert Lavon Moore	1-29-60
Edward Lane Upton	3-19-60
Bobbie E. Pigg	9-9-61
Thomas E. Vowell	10-20-61
Thomas F. Crane	12-1-61
Raymond L. Pigg	12-16-61
James C. Fortune	12-16-61
Dequency Townsend, Jr.	1-25-62

The following four applicants wrote the following verbatim statements of duties and obligations:

"All laws should be obeyed."

The first three are successive applicants.

Name	Date
Wayne B. Sherman	6-17-61
Carolyn M. Payne	7-6-61
Syble Linda Jones	7-25-61
Johnny R. Boyd	7-20-62

[fol. 1667] The second of the following accepted white applicants completed her form the day after the first. Her statement of duties and obligations:

> "As a citizen of under a constitutional form of Government is to vote at all elections and abide by the laws of the state and to get the right person in office."

is obviously taken from that of the earlier applicant.

Name	Date
Kathern Annette McDonald	11-8-62
Billie Jean H. Lacey	11-9-62

The following four accepted white applicants have statements of duties and obligations substantially identical to the following:

> "I should vote in all the elections and uphold all the laws."

Name	Date
Janice Dorcelyn Moore	10-20-62
Norman Everett Moore	10-26-62
Janet Grace Denson	4-5-60
Nelba June Fisher	10-28-60

The following two successive accepted white applicants, wrote the following verbatim statement of duties and obligations:

> "All citizens should obey all the Laws of the land. They should all register and vote."

[fol. 1668] Name	Date
Betty Lynn Wooten	8-23-60
Leonard Colbert Crowe Jr.	9-10-60

The following three white accepted applicants, two of whom registered on the same day, wrote the following identical statements:

> "To take part in all elections held, and obey all laws."

One omitted the word held and wrote "the laws" instead of "all laws".

Name	Date
Imogene Caldwell	1-8-62
Hilda R. Scott	1-29-62
Wayne E. Scott	1-29-62

The following eleven white applicants, all accepted, wrote the statements identical or substantially similar to the following:

"To take part in all elections, and obey and uphold all laws."

Name	Date
Walter Langford	4-25-60
Mrs. Dorothy Langford	4-29-60
Marilyn Deloris Massey	7-8-60
Ruth Calhoun Wagner	7-14-60
Webbye Sue Poale	7-16-60
Otis Withers	8-9-60
Betty Jean Donald	10-14-60
Thomas W. Sterling Jr.	1-6-61
Lula Haley Wright	1-23-61
Robert S. Donald	12-28-61

Four of the following accepted five white applicants have the following complex verbatim statement of duties and obligations:

"Take part in all elections, vote"

[fol. 1669] "for the person we think best suited for the office for which he is running, obey and uphold all laws."

The fifth statement has a two or three word variation. Three of these applications were filed on the same day, the others, eight days earlier and five days later.

Name	Date
Wilma Lavelle Horn	1-25-61
Carolyn Joy Nazary	1-25-61
Mrs. T. W. Starling Jr.	1-28-61
Jo Ann Steen	1-17-61
Jackye N. Staton	1-28-61

The following two white accepted applicants, apparently husband and wife, wrote the following identical unpunctuated statement of duties of citizenship:

"Voting obeying all laws"

Name	Date
Jimmy Clyde Payne Sr.	7-13-62
Mary Frances Payne	7-13-62

The following eight white applicants, all accepted, wrote the following statement, either verbatim or within one or two words of it:

"Take part in all elections and obey the laws."

Name	Date
Peggy Pierce	2-2-62

[fol. 1670]

Joseph F. Adams	2-12-62
Ruthie Waudine Moorehead	3-2-62
Ray Charles McPhail	4-21-62
Nina Patricia Scott Mansel	4-20-62
James Floyd Ware	6-7-62
Ramona Faye Chamblee	6-21-62
Peggy Lynn Thaggard	6-22-62

(2) Duties and obligations of citizenship

Identical or substantially identical statement of the duties and obligations of citizenship.

The following two accepted white applicants (husband and wife who applied the same day) wrote the following verbatim statement of duties and obligations.

"To honor and obey the laws of the Constitution. To exercise my privileges [sic] of voting for the offices of my state"

Name	Date
Audrey Fay Brewer	1-26-62
Guy Willis Brewer	1-26-62

The have verbatim interpretations of section 252, although Mrs. Brewer was section 208 to interpret.

c. Grading (No Forms)

The following table represents the number of entries in the Leake County Registration Book for the years 1960, 1961 and 1962 and the number of accepted Sworn Applications for Registration for the same period:

[fol. 1671]

Years	Entries in Registration Book	Sworn Written Applications	% of entrees with no forms
1960	242	31	87%
1961	185	29	84%
1962	300	86	71%

Registrar Collier stated that he has not retained his transfer certificate, so the exact number of persons who registered without completing application forms is not known. However, the statistics demonstrate that the number must be substantial.

[fol. 1672] Leake County #51

Part III

Listed below are the names and identification numbers of Negroes in Leake County who have been deprived of the right to register to vote and to vote by the means indicated. The number next to each name is that assigned to the applicant in the answers to Interrogatories 23 and 24 of the State of Mississippi. The specific registration and voting experiences, where known to plaintiff are set forth in Part I above, the applicant being identified by number. Where no number appears next to the name,

applicant has not been interviewed and the judgment that he has been unlawfully deprived of the right to register and to vote is based upon the application forms.

(a) The following 14 Negro applicants have been deprived the right to register and vote by the existence of the constitutional interpretation test.

Number	Name	Date
	Buster Clayton	7-27-61*
	C. T. Clayton	1-8-62*
40002	Jim Dotson	5-17-62
40005	Alice Greer	5-8-62
40008	Davie Hudson	7-29-61*
40009	Joe C. Hudson	7-28-61*
40011	Winson Hudson	7-29-61*
40011	Winson Hudson	10-9-62
40012	Docia Jackson	5-8-62
	Bertha Kirkland	1-5-62*
	Essell Langdon	1-30-62*
	Heshe Latike	1-20-62
40014	Bebonor E. McDonald	7-28-61*
	Ernestine Landers	5-7-62

[fol. 1673] The persons designated with an asterisk were also rejected because of the existence of the perfect form requirement. Their forms were marked incomplete because they failed to sign the form in the right place.

(b) The application forms of the four following additional Negro applicants were initially marked rejected and incomplete for failure to sign in the correct place. Each was assigned Section 241 (17 lines, 206 words) and each failed either to interpret the constitution or to write a statement of the duties of citizenship.

Number	Name	Date
	Edward Boone	2-8-60
	Geneva Clayton	12-27-60
	Louie Hutchins	1-7-61
40015	Jodie L. McDonald	1-31-61

At least one (Jodie McDonald) was told that he had failed. Subsequently, the names of three of these applicants were written into the registration books in irregular fashion, as follows:

1. The entry for McDonald is dated July 1962, whereas his application was in January 1961;

2. The entry for Boone is written in over an erasure; and
3. The entry for Miss Clayton is squeezed in between two lines.

[fol. 1674] It appears that none of these applicants was registered in normal fashion and that each was effectively deprived of the right to register to vote and to vote by the existence of the constitutional interpretation test and the perfect form requirement.

[fol. 1675] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3312

[Title omitted]

ANSWERS TO INTERROGATORIES OF STATE OF MISSISSIPPI; MRS. PAULINE EASLEY, CIRCUIT CLERK AND REGISTRAR OF CLAIBORNE COUNTY; J. W. SMITH, CIRCUIT CLERK AND REGISTRAR OF COAHOMA COUNTY; T. E. WIGGINS, CIRCUIT CLERK AND REGISTRAR OF LOWNDES COUNTY.—Filed September 3, 1963

Appendix B

[fol. 1676] Madison Co. #53

Part I

A

The following Negro citizens of Madison County were not permitted to register to vote. The events described below occurred at the Circuit Clerk's office in Madison County.

45015	Jan. 1960 Refused Campbell—R	Registered in about 1955 and voted in 1956 presidential election. Thought he had to re-register in 1960. Campbell told him that he had no time for him.
45022	Spring, 1960 Refused Unknown	Had been registered in beat one in Madison County, since 1954. He tried to re-register in beat four. Went to registrar's office with Robert Beamon. While filling out the form he mentioned his beat one status. Clerk threw application in waste basket telling McCullough that he couldn't vote in a forthcoming election.

[fol. 1677]

57019	1955 Rejected Holmes—R	He went to Registrar's office in Magnolia; filled out form; told by Registrar that explanation of what he copied from book not correct.
57034	1957 Rejected Holmes—R	She went to Registrar's office in Magnolia; she was to read from book and interpret what she read; when she finished, she was told that her interpretation was not correct, and was rejected.

57041	Fall 1957 or Spring 1958 Rejected Man	He went to Magnolia to register; he was asked by a man in the office to read a section of Constitution and interpret it; he told the man he knew nothing about the law; the man then said he couldn't register.
57029	1958 or 1959 Rejected Mrs. Holmes —D. C.	She went to Magnolia to Registrar's office with Alyne Quinn; spoke to Mrs. Holmes, who gave her a form to fill out; when she had completed the application, she was told she did not have enough in her answers and was rejected.
57037	8/9/61 Rejected Holmes—R	Went to the office of the Registrar with a group driven by George Head; only four were allowed to apply at a time; when she had completed the form, Holmes asked her what she meant by her answer to question 20; she told him; he shook his head and said she was rejected.
57033	8/10/61 Rejected Holmes—R	She went to Magnolia to register with Aron Tobias, Johnnie B. Noble and Willie B. Dillon; she filled out a form; Holmes told her she had not written enough on the interpretation, that he wanted an essay; she was rejected.
[fol. 1678]		
57038	8/10/61 Rejected Holmes—R	She went to Magnolia to Registrar's office with four other Negroes; filled out form; Mr. Holmes said her interpretation was bad and rejected her.
57028	8/10/61 Rejected Holmes—R	He went to Magnolia to register along with Bertha Ashley, Marie Nobles, Dorothy Nobles and Mary Nell Nobles; filled out form; told that he had not written enough for interpretation.

57000	8/10/61 Rejected Holmes—R	She went to Magnolia to register with George Head. Filled out a form. Told she was rejected.
57006	8/15/61 Rejected Holmes—R	She went to Magnolia to register. Filled out form. Registrar said he didn't like her answers to interpretation and duties questions. She was rejected.
57006	8/18/61 Rejected Holmes—R	She went to Registrar's office in Magnolia to register. Filled out a form. Registrar after short time asked if she had finished. She answered no. He took away book she was using for interpretation. Registrar told her she didn't answer fully enough, and rejected her.
57026	8/29/61 Rejected Holmes—R	Went to Magnolia to register; filled out form; told that interpretation was not exactly right and was rejected.
57035	8/29/61 Rejected Holmes—R	She went to Registrar's office in Magnolia with Margaret Thompson and Jessie Lee Casten to register; she filled out a form; Holmes told her she had not written enough on the interpretation and duties questions; she was rejected.

[fol. 1679]

57035	8/30/61 Rejected Holmes—R	She went to Registrar's office in Magnolia to register; she filled out a form; Holmes said her interpretation was too far-fetched, and rejected her.
57028	8/31/61 Rejected Holmes—R	He went again to Magnolia to register. Went with Marion Nobles; filled out form; was told his interpretation was wrong, and was rejected.

57015	8/7/62 Rejected Holmes—R	He went to Magnolia to Registrar's office with Theon Jones, Izeal Bennett and C. J. Curry. He filled out form. The registrar said he didn't have enough in interpretation of Constitution, and rejected him.

[fol. 1680] Pike County #54

Part II

Application Forms

1 & 2. Number of Forms and Periods Covered

The first form is dated April 20, 1960.

The registrar, Mr. Holmes, was advised of an investigation in Pike County at the request of the Civil Rights Division of the Department of Justice on May 26, 1961. The date of the form of the first white person rejected for registration is June 2, 1961. The next white person whose form was rejected is October 3, 1961.

A Negro registration drive was started in Pike County in August of 1961. On May 26, 1961, Mr. Holmes was notified by the FBI of an investigation by the Civil Rights Division of the Department of Justice. Before this period Wendel Holmes had not rejected any white applicant. The first rejected white applicant is in June 1961. During and after this period he rejected 53 Negroes. This was more than one-half of those applying. During the entire period for which we have forms he failed 61 Negroes out of 117 applying and only 15 whites out of 523 applying. The totals are:

White	
Accepted	508
Rejected	15
Negro	
Accepted	61
Rejected	56

[fol. 1681] 3. Analysis of Forms

a. Selection of Sections of the Constitution

(1) The following table shows the section distribution by race from the date of the first form, April 20, 1960, to the date of the second photographing, December 12, 1962.

Section	Number of Words	Whites	Negroes
2	59	0	2
6	54	0	1
17	76	0	1
20	30	2	0
22	31	7	0
25	32	1	0
29	27	1	0
41	82	21	1
42	74	4	0
44	98	27	21
47	45	1	0
53	80	3	4
54	38	1	0
55	110	0	2
59	136	0	1
65	51	4	0
70	35	1	0
73	22	1	0
74	26	3	0
75	19	3	0
76	21	3	0
77	33	10	0
78	36	13	0
79	82	8	12
81	80	2	5
87	87	4	10
88	55	4	2
95	100	1	1
96	54	1	1
100	93	0	3
103	60	0	2
105	53	88	7
106	56	40	2
110	115	2	2
111	80	2	5
112	180	0	1
150	52	103	12

[fol. 1682]

Section	Number of Words	White	Negroes
153	40	38	2
154	55	58	4
160	96	1	2
161	90	0	2
165	135	0	1
173	58	7	2
176	52	4	0
177	99	2	0
180	100	0	1
187	55	6	1
188	51	1	0
190	77	0	1
202	82	6	1
203	58	12	0
204	85	6	0
208	54	1	0
232	50	1	0

For the total period the average length of sections given to Negroes was 79 words; for white persons it was 57 words.

(2) During the period in which there was a registration drive by Negroes in Pike County (August 8, 1961, the date of the first Negro form—October 27, 1961, the date of the last Negro form) Mr. Holmes began to use many sections of the Mississippi Constitution which he had never used before. Seventeen new sections were used during this period. The following tables show (a) the incidence of these new sections by race, (b) the incidence by race of sections which Mr. Holmes had previously used.

[fol. 1683] (a) Sections which were *NOT* used prior to the Negro registration drive. Incidence by race and who by race received it first.

Period: During Drive—August 8, 1961-October 27, 1961.

Section	Number of Words	White	Negro	Race of person first receiving Section
2	59	0	2	N
6	54	0	1	
17	76	0	1	N
22	31	1	0	W
53	80	0	1	N
55	110	0	2	N
59	136	0	1	N
81	80	1	4	N
88	55	2	2	N
95	100	0	1	N
96	54	0	1	N
100	93	0	3	N
112	180	0	1	N
160	96	0	2	N
161	90	0	1	N
165	135	0	1	N
180	100	0	1	N
	90 (Average)	4	25	15 N—1 W

(b) Sections which were used prior to registration drive which were used during drive. Incidence by race and race of applicant first receiving section.

Section	Number of Words	White	Negro	Race of person first receiving section
44	98	3	8	W
65	51	2	0	W
79	82	4	4	N
87	87	2	5	N
105	53	15	2	W
106	56	5	0	W
110	115	0	1	N
111	80	1	3	W
154	55	1	0	W
	73 (Average)	33	23	3 N—6 W

[fol. 1684] From these two tables the average length of sections given to Negroes from August 8, 1961, to October 27, 1961, was 88 words; for white applicants it was 63 words.

b & c and Part III

Analysis of the records has not been completed and these portions will be furnished upon completion.

[fol. 1685] Rankin County #55

Part I

A

The following incident which occurred at the Circuit Clerk's office at Rankin County while two Negroes were filling out application forms deterred non-registered Negro citizens from attempting to register to vote.

On February 1, 1963, Wallace Davis and Murray C. Carr, Negroes, went to the Circuit Clerk's office to register to vote. Outside the courthouse they met Mitchell Grim, a Negro who was already registered. The three Negroes went into the Circuit Clerk's office. Davis and Carr began filling out forms while Grim waited inside the office by the door to the office. While Davis and Carr were filling out forms, the Sheriff of Rankin County, Jonathan R. Edwards, Jr., came into the office and struck Grim several times in the face and on his body with a blackjack. While the Sheriff was striking Grim, the Sheriff's deputy, J. B. Collum, entered the Registrar's office and started striking the two Negroes who were registering.

61000
61001
61003

And see testimony in case of *United States* v. *Edwards* and Findings of Fact of District Court filed on July 23, 1962.

[fol. 1686] Scott County #56

Part I

A

The following Negro Citizens were not permitted to apply to register to vote in Scott County. The events described below occurred at the Circuit Clerk's office in Scott County.

62016	About 1955 Not permitted to apply Williams-R	Went to office of Registrar alone; Mr. Williams told him "We ain't ready for niggers yet".
62013	Early 1956 Not permitted to apply Rigby-R	Went to office of the Registrar with Mrs. Payton; Rigby said he was too busy and did not allow them to apply.
62013	About 1956 Not permitted to apply Rigby-R	Went with husband to Registrar's office; Rigby again said he was too busy, told them to come back; she came back alone and Rigby again told her to come back, did not permit her to apply.
62014	1956-57 Not permitted to apply Rigby-R	He went with wife. Rigby said he had something to do and that they should come back another time, and declined to permit them to apply.

[fol. 1687] Simpson Co. #57

Part I

A

The following Negro citizens of Simpson County were not permitted to pay their poll taxes. The events described below occurred at the Sheriff's office in Simpson County.

64099	1955 January Not allowed to pay Mullen (Sheriff)	Tried to pay poll tax when he paid his land tax and was told by Sheriff that he was not collecting poll taxes at that time.
64099	1956 January Not allowed to pay Sheriff	Tried to pay poll tax when he paid his land tax and was told by Sheriff that he was not collecting poll taxes at that time.
64099	1957 January Not allowed to pay Sheriff	Tried to pay poll tax when he paid his land tax and was told by Sheriff that he was not collecting poll taxes at that time.
64099	1958 January Not allowed to pay Sheriff	Tried to pay poll tax when he paid his land tax and was told by Sheriff that he was not collecting poll taxes at that time.
64099	1959 January Not allowed to pay Sheriff	Tried to pay poll tax when he paid his land tax and was told by Sheriff that he was not collecting poll taxes at that time.
64099	1960 January Not allowed to pay Sheriff	Tried to pay poll tax when he paid his land tax and was told by Sheriff that he was not collecting poll taxes at that time.

[fol. 1688]

64099	1961 January Not allowed to pay Deputy Sheriff	Tried to pay poll tax when he paid his land tax and was told by Sheriff's deputy that he was not collecting poll taxes at that time.

[fol. 1689] Smith County #58

Part I

A

The following Negro citizen was not permitted to apply to register to vote. This event occurred at the Circuit Clerk's office in Smith County.

65000	1960 Not allowed to apply R	Went to register and was told by registrar that he could not register now.

[fol. 1690] Clarke #59

Part I

A

The following Negro citizens of Clarke County were not permitted to apply to register to vote. The events described below occurred at the Circuit Clerk's office in Clarke County unless otherwise noted.

12007	Spring, 1955 Refused Ramsey-R	Applied with Andrew Kendrick at Stonewall. He told Ramsey he wanted to register and was asked if he knew about the Constitution of the U.S., the 14th and 15th Amendments, and the Constitution of Mississippi. The applicant said he knew about them and Ramsey told him to go back and study some more and that they will have to register you all to vote because we will have to have some of you on juries. They left.

12015	1955 Refused Ramsey-R	Went with Reverend Goff to register in Stonewall, but Ramsey refused to permit them to register, telling them to wait; as they were walking away, Ramsey overtook them and said, "Don't you boys go off and say that I won't register you, but come to Quitman some time and I'll see what I can do."
12007	1955 Refused Ramsey-R	Applied with G. W. Cotton and asked to register. Ramsey said books were tied up and to come back later. They left.
12009	Since 1955 Refused Ramsey-R	Went to the office of the Circuit Clerk with Maceo Hardaway and G. D. Cotton in order to register, but they were told by the clerk that the books were not open to Negro applicants.
12010	1957 Refused Ramsey-R	Went to the office of the Circuit Clerk and inquired if he could register; the registrar told him they were not registering Negroes in view of the trouble in Alabama.
12011	Jan. 28, 1958 Refused Ramsey-R	Applied with George Haynes and Billy McLain, Negroes. Were told by Ramsey that when the "stuff" in Washington, Arkansas, and Alabama is settled, I'll let you come back and apply.

[fol. 1691]

12012	Jan. 28, 1958 Refused Ramsey-R	Applied with Willie McLain and and Maceo Hardaway at the clerk's office and Mr. Ramsey told him he would have to wait until we see what was going to happen in Washington.

12016	Jan. 28, 1958 Refused Ramsey-R	Went to the office of the Circuit Clerk with Maceo Hardaway and George Haynes; they asked the clerk if they could register but he refused to permit them to do so, saying they did not want the same trouble they had in Little Rock and he was going to wait to see what Washington was going to do; while they were in the sheriff's office paying their poll tax, the clerk came in, spoke to a deputy, then left, after which the deputy called them into the office; deputy asked if they were not getting along all right, then said, "We aren't going to have you niggers in white folks business"; they finished paying their poll tax and left.
12015	About 1958 Refused Ramsey-R	Went with George Cotton to the office of the Circuit Clerk, but Ramsey would not register them, saying it was not time yet, they should wait and he would let them know.
12002	About 1958 Refused Ramsey-R	Applied with Maceo Hardaway and his brother, all Negroes. Registrar said it was not any use in coming back any more "because we're not going to register you colored fellows because the supervisors and the sheriff and the town got together and decided not to register Negroes."
12011	About 1958 Refused Ramsey-R	Applied with J. J. Hardaway, McRee, and George Cotton. Ramsey said he, the supervisors, and the sheriff decided that they would not let negroes vote until they were made to do so. They left.

12017	1958 Refused Ramsey-R	Applied with George Cotton, Maceo Hardaway, and Jake Hardaway and was told by registrar that they decided not to let them register until they have to do it.

[fol. 1692]

12011	Unknown Refused Ramsey-R	Applied with Thomas Jones, J. J. Hardaway and Maceo Hardaway, all Negroes. Mr. Ramsey told them to wait for the stuff going on in Washington, D.C.
12018	1959 Refused Ramsey-R	Went to the office of the Circuit Clerk to register; Ramsey said there was a case pending in the western part of the state and he wanted to wait until that was cleared up; refused to register him.
12018	1961 Refused Delay Accepted Ramsey-R	Went to the office of the Circuit Clerk to register, but Mr. Ramsey said he had no forms at that time; returned twice, but Ramsey was out of the office and a lady there said he would have to see Ramsey in order to register; returned again and found Mr. Ramsey in the office; Ramsey gave him a form to fill out and section 112 of the Constitution to interpret; when he had completed the form, Ramsey took it and said he would have to look it over and Owens should come back; when he returned, Owens was permitted to register.

[fol. 1693] Clarke County #59

Part II

Application Forms

1. Number of Application Forms

A re-registration of all voters was begun in Clarke County in January, 1953. On April 10, 1961, a special agent of the FBI notified Mr. Ramsey that an investigation into racial discrimination in registration was being conducted in Clarke County. Negroes were not permitted to fill out application forms until June 1, 1961. The first form of a white person is dated May 11, 1960. From May 11, 1960, to December 26, 1962, the date of the trial in *U.S.* v. *Ramsey*, there were 233 forms filed by white persons and 3 forms filed by Negroes.

2. Period Which Forms Cover

May 11, 1960-December 26, 1962. Many white persons were registered in Clarke County without having to fill out forms or even go to the registrar's office. A finding of fact by the District Court in *U.S.* v. *Ramsey* on this point is as follows:

> "The illegal registration of unqualified citizens, and the illegal registration of citizens who were probably entitled to register but did not take the trouble to go to the registrar's office to register, constitute the bulk of abuses of state law in this county by the registrar. There are approximately 1500 such illegal registrations on the books in this county. In 1,289 instances a citizen unlawfully registered by proxy."

3. Analysis of Forms

(a) Selection Discrimination

Only 3 Negroes had filled out forms by the time of the trial on December 26, 1962. Two of the three were required to interpret Section 112.

[fol. 1694] Section 112.

> Taxation shall be uniform and equal throughout the state. Property shall be taxed in proportion to its value. The legislature may, however, impose a tax per capita upon such domestic animals as from their nature and habits are destructive of other property. Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value. But the legislature may provide for a special mode of valuation and assessment for railroads, and railroad and other corporate property, or for particular species of property belonging to persons, corporations or associations not situated wholly in one county. But all such property shall be assessed at its true value, and no county shall be denied the right to levy county and special taxes upon such assessment as in other cases of property situated and assessed in the county.

None of the first 143 white persons who filled out forms from May 11, 1960, to April 16, 1962, received Section 112 to interpret. From April 16, 1962, to July 11, 1962 (when the Government photographed the voting records), ten of 40 white persons and the one Negro applicant received Section 112. From July 11, 1962, to the trial on December 26, 1962, 7 of the 51 white applicants received Section 112.

An analysis of the forms from May 11, 1960 until June 1, 1961, when the first Negro was permitted to fill out a form, shows the following:

Date	Name	Registration	Comments

Date	Name	Race	Section	# Lines
May 11, 1960	Robinson	White	28	2
August 30, 1960	Hill	White	13	6
Oct. 12, 1960	Johnston	White	14	2
Jan. 14, 1961	Griffin	White	28	2
Jan. 15, 1961	Lee	White	28	2

[fol. 1695]

Date	Name	Race	Section	# Lines
Jan. 31, 1961	Broadhead	White	28	2
May 21, 1961	Thornhill	White	5	3
May 30, 1961	McBride	White	5	3
June 1, 1961	Owens	Negro	112	12

(b) Assistance to White Persons

White Witnesses Who Testified in U.S. v. Ramsey

1958			
1/25	Pleamon Griffin	Ramsey registered him. Just signed book.	4th grade "not too good" at reading—Can't read Q. 19
3/28	Doyle Dykes	Just signed book	6th grade Can't read Q. 19
11/5	Mrs. M. W. Hayes	Just signed book	4th grade Can't read Q. 19
11/21	Mrs. Anita Carr	Ramsey registered her. Just signed book.	6th grade Can't read
11/21	Mr. Mansel Robinson[1]	Ramsey registered them. Mrs. Robinson just signed book for husband and herself.	Mr. Robinson couldn't read or write
11/21	Mrs. Mansel Robinson[1]		
1959			
1/17	James Roberts	Ramsey registered him. Just signed book.	6th grade

[1] Mrs. Anita Carr's mother and father. See her testimony.

[fol. 1696]

Date	Name	Registration	Comments
1959			
1/17	Mrs. James Roberts [2]	Ramsey told her husband he could sign for her	Did not go to Registrar's office
3/10	Lavon Scarbrough	Harvey Dearman registered for him—he did not go to Registrar's office	"Can't read except a little bit"
4/27	Alton Lightsey	Father registered for him	Did not go to Registrar's office
1960			
5/21	David Lafferty	Ramsey registered him. Just signed book	9th grade Can't read Q. 19
6/5	A. L. Johnson	Lady registered him. Just signed book	3rd grade Can't read
7/8	Jesse Culpepper	Ramsey registered him. Just signed book	9th grade
7/8	Mrs. Jesse Culpepper [3]	Husband registered for her	Did not go to Registrar's office
8/2	James Robinson	Just signed book	9th grade
1961			
1/13	Mrs. Frances Owen	Ramsey registered her Just signed book	
1/14	Jerry Griffin	Had to fill out application form—Signed book same day	12th grade Can't read section he interpreted
1/28	Mrs. Glenn Beech	Just signed book	10th grade
1/31	Mrs. Doris Wigington	Ramsey registered her. Just signed book	10th grade

[2] See testimony of James Roberts.
[3] See testimony of Jesse Culpepper.

[fol. 1697]

Date 1961	Name	Registration	Comments
2/4	Raymond McInnis	Ramsey registered him. Just signed book.	8th grade
2/4	Mrs. Raymond McInnis [1]	Ramsey registered them. They just signed book.	
2/4	Marshal Abston [1]		
2/4	Mrs. Marshal Abston [1]		
2/4	Mrs. Grace Abston	M.O. Lucas registered for her. She did not go to Registrar's office	½ of 3rd grade. Can't read.
2/4	Norman Dykes	Someone registered him. He did not go to the Registrar's office.	No education Can't read or write
1962			
6/9	Willard Roberts	Ramsey registered him. Had to fill out application form. Same interpretation as Harold Turner (white) on same day and Sam Owens (Negro) on June 1, 1961	8th grade

[1] See testimony of Raymond McInnis.

(c) Assistance to White Persons Who Filled Out Forms

(1) Two White persons received Section 112 on June 9, 1962. Their interpretations are identical to the interpretation of Samuel Owens (a Negro), who applied on June 1, 1961.

Samuel Owens—June 1, 1961—Negro—Retired school principal

In fairness to all citizens of the state, taxes leveed shall be the same. However, all property shall be assessed and tax collected, according to the value thereof. The legislature may impose a tax to be paid by the owner of any animal that may be destructive to other property.

[fol. 1698] General state laws provide for the uniform rules by which property may be assessed according to its true value. The legislature, by law, may provide in a special manner for valuation and assessment of property belonging to railroads and other persons or

corporations etc not situated wholly in one county. Yet all such property shall be assessed at its true value. Each county has the right to levy and collect taxes as in cases where property is situated in the county.

Willard Roberts—June 9, 1962—White—Lift Operator

In fairness to all citizens of the State taxes leveed shall be the same. However, all property shall be assessed and tax colected according to the value thereof. The Lesagter may impose a tax to be payed accountant of any animal that may be destructive to other property.

Earnest Harold Turner—June 9, 1962—White—Saw Mill Worker

In fairness to all citizens of the state, taxes leveed shall be the same. However, all property shall be assessed and tax collected according to the value thereof. The legislature may impose a tax to be paid by the owner of any animal that may be destructive to other property.

Willard Roberts gave almost the same duties and obligations as those given by Samuel Owens.

Samuel Owens—Negro—June 1, 1961

All citizens are obligated to obey the laws of the land, protect and defend their state and country from its enemies. Under any and all circumstances respect and obey the Constitution of the government. It is the sacred duty of citizens of a Constitutional government to respect authority and conform to its laws.

Willard Roberts—White—June 9, 1962

All citizens or obligate to obey the laws of the land, protect and defend there statutes and country forever. The taxes we are supposed to pay because it help us to be strong and keep our defenses up and fight our enemy.

[fol. 1699] (2) Two white persons who received Section 112 gave identical interpretations.

James F. Young—April 16, 1962—White—Painter

All taxes are the same throughout the state and property will be Taxed according to its worth. There will be taxes on any part of a bussisseness located inside the county. They can put a Tax on livestock since their habits are destructive to other property.

Nancy Sue Turner—June 11, 1962—White—Housewife

All taxes are the same throughout the state and property will be taxed according to its worth. There will be taxes on any part of a bussisseness located inside the county. They can put a tax on livestock since their habits are destructive to other property. The legislature can provide a special mode of valuation and assessment for railroads, and other corporate property belonging to persons, corporations or associations situated wholly in one county.

(3) Two white persons who received Section 112 gave identical interpretations.

John R. Lightsey—May 19, 1962—White—College student

I think a reasonable interpretation of the 112th section of the constitution of Mississippi is that property shall be taxed as to its true value. The legislature will evaluate and assess for railroads and other corporate property not located in one county. Also no county will be denied the right levy county and special taxes upon such property or belonging.

Ella L. Fontaine—June 28, 1962—White—Housewife

I think every thing should be taxed according to their value. I a reasonald interpparation of the 112th section of the constitution of Mississippi is that property shall be taxed as to its true value. The legislature will evaluate assess for railroads and other corporate property not located in one county. Also no county will be divide the right by county and special taxes upon such property or belonging.

[fol. 1700] Their duties and obligations are also identical.

John R. Lightsey

To follow the obligations of citizenship under a constitutional form of government I think a person should understand the constitution and its law and abide by them.

Ella L. Fontaine

To follow the obligation of Citizens under a constitution form of government I think a person should understand the constitution and its law and abide by them.

(4) Two white persons who received Section 14 gave substantially identical interpretations.

John E. Stutts—December 14, 1961—White—Teacher

My interpretation of the 14th section of the constitution of Mississippi is that we have the right of life, liberty, and property and that we cannot be deprived of this except by due process of law. This places upon us as citizens and voters of this state the responsibility of maintaining a strong and sound government that will secure us these rights.

Ella Mae Manasco—April 30, 1962—White—Housewife

My interpretation of the 14th section of the constitution of Miss. is that we have right to vote. The liberty the property and that we cannot be deprived of law. This places upon as to citizens of our state.

Their duties and obligations are also substantially verbatim.

[fol. 1701] Jasper Co. #60

Part I

A

The following Negro citizens of Jasper County were not permitted to register to vote at the places noted in Jasper County.

31008	1956 Refused McDavid	Went to the Paulding registration office alone. He had paid his poll tax for the two previous years. Mr. Myrick McDavid in the sheriff's office told him to go to Bay Springs. He went to Bay Springs immediately but there was told that the Circuit Clerk was out. Two weeks later he returned to Bay Springs where a man told him that the circuit clerk was sick.
31008	Aug or Sept 1957 Refused Registrar	Went to the Bay Springs registration office. He was told that the books closed on July 1; and therefore he could not register.
31001	About 1958 Refused	Mr. Jones went to the Bay Springs registration office in April 1958. He was waited on by a man. This man told Jones that he was going to dinner and therefore Jones could not register.

[fol 1702] Jasper Co. #60

Part I

B

The following Negro citizens of Jasper County were delayed in their attempts to register to vote at the places noted in Jasper County.

31008	About 1958 Delayed Accepted	Went to registration office with his brother Odie Milsap. He was given a form and Sec. 30 to interpret. When he finished he asked if he qualified and was told that a board had to pass on it. Three months later he returned and was told that he had qualified.
31004	Oct 4, 1961 Clerk	Went to the Bay Springs County Seat on Oct 4, 1961. He was given a form to fill out and Sec. 244 to interpret. When he had finished the clerk told him that he had done "pretty good," but when asked if it would do any good, the clerk replied "you come back." He evidently took this as a rejection.
31006	Mar 1963 Delay Rejected Grissom-R	Went to the Bay Springs registration office accompanied by Odie Milsap, Lindsay McCullum, L. B. McGill, William Taylor and Roy Taylor. Grissom took them one at a time and had them fill out forms. He was told to come back to find out the results. When he returned he was told that he had failed.

[fol. 1703] Lauderdale #62

Part I

A

The following Negro citizens of Lauderdale County were required to make more than one trip to the registrar's office to fill out forms and learn if they passed or failed, prior to the publication law passed in 1962. The events described below occurred at the Circuit Clerk's office in Lauderdale County.

38042	1958 Delay Coleman	Accompanied to registrar's office by Albert Jones, who merely escorted him. Had to copy and interpret a section of the constitution. Coleman told him he would contact him but never did.
38052	1958 or 1959 Delay Rejected Woman	Went alone to register and filled out a form. He was then told the clerk would get in touch with him. The clerk never did.
38053	Feb., 1960 Delay Rejected Woman	Went to office with Ida M. Henderson and Ina Pearl Snowden. Received section of Mississippi constitution to interpret. She called back in a week or two for results and was told that she had failed.

38025	1960 Delay Rejected Woman	Went to register with Ina Pearl Snowden and Ruthie Williams. Lady clerk took them to a back room. Three white people appeared to be applying in main office. Received section about railroad rolling stock. Companions received different section. Lady told her to check back in a few days, since there was a pile of applications to grade. The first time she checked back, lady could not find her application and told her to check back again. She checked back a total of three times before she found she had failed. Lady refused to tell her what she had done wrong and told her she could fill out another form the next day—although "We don't usually let you do this but perhaps Mr. Coleman will."

[fol. 1704]

38005	September 1960 Delay Rejected Coleman-R	Mrs. Chisolm filled out a form. She returned later and was told she had failed. She asked what was wrong with her form and Coleman said he could not tell her.
38011	Oct. or Nov. 1960 Delay Rejected Woman	Went with 3 Negroes (Mrs. Ray, Mrs. Dace, and Mrs. Whitlock.) Woman gave her a form and a book containing the constitution. Was not told if she had passed or failed. Mrs. Whitlock checked and learned Mrs. Curry had failed.
38020	Dec. 1960 Delay Rejected Coleman-R	She went to register with a group of Negroes. She filled out a form and Coleman told her she must call or check back to see if she pasesd.

38025	1960 Delay Accepted Coleman-R	Went alone. Asked Mr. Coleman if she could apply again after failing once and he said she could. 2 or 4 white people were applying in the main office, but she had to sit in the little room at the back. Received a section about the legislature's power to increase or decrease levies. Coleman told her she could get results in 3 or 4 days. She checked back twice without learning results, but then the lady called her and told her she had passed.
38044	1960 Delay Rejected Woman	Went to office with Ida M. Henderson and Ruthie Williams. She filled out a form. Lady asked her to return in three days. When she did so, lady told her she had failed as her name was not on the registration book, and that she could not see her form.
38004	1-20-61 Told Rejected Form Accepted Woman	Went alone. Received Section 97 to interpret. Lady told him to come back in a few days since Coleman was in court. Returned with Ruben Hughes, Negro. Lady told him he had failed. His form is marked "accepted".

[fol. 1705]

38018	1-26-61 Delay Rejected Coleman-R	She went to register with Leone Giggs. She filled out a form and was told to call later to see if she passed. When she called she was told she had failed.
38040	1-30-61 Delay Rejected Woman	Went to register with Ulpiana Sims. She filled out a form. Lady clerk said they would be advised of results. They never were. Mrs. Simmons never went back. Her form was among rejected applications.

38001	1-30-61 Delay Rejected Coleman-R	She filled out a form and was told she would hear results in 3 or 4 days. She never heard. Form in rejected pile.
38037	2-1-61 Delay Rejected Woman	Went to registrar's office with Nelia Davis and Dorothy Clayton. Placed in separate room. Given section 50. to interpret and paraphrased section as an answer. Lady asked her to return in a few days to get results.
38055	3-7-61 Told Rejected Form Accepted Coleman-R	Went to office with his wife Ruthie Lee, and Mrs. Exie Thomas. Received Section 67. Would say nothing about it except that he failed. Name later placed on Registration Book without his knowledge.
38048	3-7-61 Told Rejected Form Accepted Woman	Accompanied to office by Mr. and Mrs. Lurrie Willis. Given Section 83. Returned to office one month later and told she had failed. Application later turned up in accepted file, Mrs. Thoman was not informed she was accepted.
38020	5-18-61 Told Rejected Form Accepted Coleman-R	Went alone. Took test and received Section 253. Told to return later. Advised that she had failed, yet in February, 1962, her application was placed in the accepted file without her knowledge, and her name was written in the registration book.

[fol. 1706]

38006	7-13-61 Delay Rejected Female Deputy	Went with Mrs. Lili Belle Abernathy. Filled out a form and learned a few days later that she had failed.

38006	7-17-61 Told Rejected Form Accepted Woman	Went alone. Received Section 97. Lady told her she failed. Her form was among accepted applications.
38007	7-27-61 Delay Accepted Coleman-R	Attempted to register on July 27, 1961 with Nelia Davis and Mrs. Sarah Pollard. Mrs. Clayton filled out a form and had to return to the registrar's office at least three times before she found out she passed.
38046	1-31-62 Rejected Woman	Went to register with Mrs. Daphne Hudson, Janice McKinney, and Eddie Nelson. She filled out a form but was not told result. About a month later, received a message from female clerk through Daphne Hudson that she had failed and that Mrs. Sykes should come back and take test over. Her husband went to courthouse and Coleman said she was rejected.
38023	1-31-62 Delay Rejected Coleman-R	Went in to register alone. Told lady he had been registered in 1946 and asked if he had to again. She said yes. Received Section 265 to interpret. Coleman told him he would let him know the result of the test. He never heard from him. Form among rejected applications.

[fol. 1707] B

The following Negro citizens of Lauderdale County were not permitted to register to vote because their interpretations of duties of citizenship did not satisfy registrar.

38058	3-22-60 Rejected Woman	Husband took her down. She was sent to back room. Received Section 122 to interpret. After she handed form in, lady told her to come back. Her husband checked back and was told her interpretation was too similar to the text of the section.
38018	2-16-61 Rejected Coleman-R	She filled out a form and interpreted Section 83. Lady told her to check back in a few days. Lady told her over phone when she checked back that there was a note attached to her application that Coleman wanted to see her. She went to the office and he told her that the statement of duties and obligations of citizenship was "not enough."
38058	3-21-61 Rejected Woman	She went to register with her husband. She received Section 196 to interpret, the lady selecting it noticed she had some of the duties of citizenship written out on a sheet of paper. Lady confiscated it and rejected her. Husband went back to check about this and lady said this was just like receiving assistance.

[fol. 1708] Part II

Application Forms

1. Number of Application Forms

There are 7 forms in 1960 dated from 1/9/60. The first white accepted form other than absentee is dated 3/20/61. The period in which white forms were consistently retained began in August 1961. The total number of forms is as follows:

White	604
Accepted	545
Rejected	3
Pending	56
Negro	78
Accepted	40*
Rejected	34
Pending	4
Unidentified by race	149
Accepted	127
Rejected	12
Pending	10

* Fourteen of the accepted Negroes who applied in 1960 and 1961 were not placed on the registration book until February 1962, shortly after the United States requested by letter to see Mr. Coleman's records.

2. Periods Which Forms Cover

a. Total period: January 9, 1960—date of first form—to December 17, 1962—date of last form.

b. January 9, 1960-January 18, 1961.
The Department of Justice wrote Mr. Coleman to inspect his records on January 18, 1961.

c. January 9, 1960-March 20, 1961.
This is the period during which Mr. Coleman retained only the rejected application forms. There is one form during this period which is accepted but appears to be an absentee form.

[fol. 1709] Other than this form the totals for this period include 31 Negroes and 4 unknowns as to race and one white. Nine of these Negroes were subsequently given accepted registration numbers and placed on the registration book in about February 1962. This occurred shortly after the registrar, Mr. Coleman, agreed to permit the Department of Justice to photograph his records (January 29, 1962). The agreement to photograph was withdrawn the first week in February 1962.

3. Analysis of Forms

a. Selection of Sections of the Constitution

1. Period: January 9, 1960-December 17, 1962 *

Section	White	Negro	Unknown
8	14	1	3
12	1	0	0
20	11	1	3
30	259	8	63
33	0	0	1
35	15	0	5
37	2	0	0
39	0	0	1
50	0	2	1
62	0	1	0
63	0	1	0
66	0	0	1
67	23	4	6
73	1	0	0
83	22	4	4
91	0	1	0
92	15	1	1
97	1	2	0

* The totals are slightly less than the total number of forms because on some forms no section number is indicated and the section was not identified.

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Section	White	Negro	Unknown
102	1	0	0
104	1	0	0
108	3	1	1
110	1	0	0
116	1	0	0
117	2	0	0
118	24	6	5
119	1	1	1
122	0	2	1
123	113	8	23
126	1	0	0
130	1	0	0
132	0	1	0
138	0	0	1
139	0	1	0
142	0	1	0
144	1	2	0
148	1	0	1
162	2	1	1
163	0	1	0
164	28	3	11
167	31	2	5
169	0	1	0
185	0	1	0
190	0	1	0
196	0	3	0
198	0	1	0
215	0	1	0
220	0	2	0
253	0	1	0
263	1	1	0
264	0	1	0
265	29	10	10

2. Period: January 9, 1961-January 18, 1962 (the date Registrar was requested to permit inspection of records).

The two sections most commonly assigned to white applicants were Section 30 and Section 123, which read as follows:

Section 30: "There shall be no imprisonment for debt."

Section 123: "The governor shall see that the laws are faithfully executed."

[fol. 1711] The following table shows the incidence of these sections during this period.

	Total	Sec. 30	% Sec. 30	Sec. 123	% Sec. 123
Negroes	44	1	2	3	6.7
Whites	124	50	40	35	28

Prior to the date Mr. Coleman was notified of prospective inspection of his records, 9% of the Negroes and 63% of the whites received the short and easy sections assigned by the Registrar. Moreover, the forms of two of the three Negroes who received Section 123 reveal that these applicants were semi-literate and left their interpretations blank.

b. Assistance to White Applicants

Analysis of the Lauderdale County applications reveals that a very large number of white applicants, and a few isolated Negroes, have identical or substantially identical constitutional interpretations and statements of duties and obligations of citizenship. In many instances, both the interpretation and the statement of duties and obligations are identical. As a matter of convenience, we present statistics first as to Question 19 (constitutional interpretation) and Question 20 (duties of citizenship). In the analysis of identical answers to Question 20, we note the number of applicants who also wrote one of the standard constitutional interpretations.

[fol. 1712] 1. Interpretation Test

Section 30

The most massive assistance in the constitutional interpretation test was given to those applicants who were assigned Section 30 of the Mississippi Constitution ("There shall be no imprisonment for debt"). A total of 149 applicants (124 white, 25 whose race is unknown but believed to be white) had a series of verbatim interpretations of this section. A further 47 (39 white, 6 whose race is unknown and 2 Negroes) had interpretations which, while not precisely verbatim, retained the two salient features of the 149 standard answers:

1) they all had the same basic sentence structure; and
2) in each the word "debt" was simply rewritten, not explained.

The breakdown on the verbatim answers is as follows:

The following applicants (71 white, 16 unknown) wrote as their interpretations:

"No one can be placed in prison for debt."

Name	Date of Application
Tommi W. Crenshaw	8-2-61
Edward D. LaFavour	9-22-61
Ann LaFavour	9-22-61
Glenda A. Allen	9-29-61
Norman M. Rutledge	10-3-61
Anne S. Bell	10-13-61
Alton A. Parten	10-25-61
Hubert B. Weekley	10-25-61
Virgil L. Foster	11-28-61
[fol. 1713]	
Lara B. C. Rutledge	1-2-62
Jimmie L. McDuffie	1-8-62
Mabel R. Orr	1-12-62
Florence H. Hill	1-15-62
Rubye H. Hargon	1-17-62
Dorothy F. Acker	1-19-62
Patricia A. M. Watts	1-19-62
Carl R. Scarlet	1-23-62
Ray A. McFailens	1-24-62
Pauline A. Rowell	1-24-62
Annie B. Autrey (Mrs. Horace)	1-24-62
Willie L. Davis	1-25-?
Marie B. DeFord	1-25-62
Mrs. R. L. (Lois) Fulton	1-25-62
Williard M. DeFord	1-25-62
Mary G. Chisolm	1-26-62
Roy L. Spann	1-26-62
Marie H. McLemore	1-29-62
Reginald J. Dufore	1-29-62
Richard A. Cumberland	1-30-62
Billy H. Covington	1-30-62
Mary Alice Stewart (Mrs., Junior)	1-31-62
Mary P. (C. M.) Melton	1-31-62
Clara F. Webb	1-31-62

Name	Date of Application
Gladys F. Lawrence	1-31-62
Rachel B. May	1-31-62
Margie C. Turner	1-31-62
Ruth K. Holt	1-31-62
Alice G. Thrash	1-31-62
Thomas J. Seay	1-31-62
Roy M. Alexander	1-31-62
Frank F. Alley	1-31-62
Joyce S. Randall	1-31-62
Thelma C. Caldwell	1-31-62
James J. McCarty	1-31-62
James A. Gibson	1-31-62
Sarah R. Combs	1-31-62
Lucinda J. R. Peacher	2-1-62
Delia D. Manley (Mrs. C. Y., Jr.)	2-1-62
Kaye F. Rutledge	2-1-62
Myrtle Ruth B. Faucette	2-2-62
Janette M. Shirley (E. B.)	2-6-62
John W. Stewart, Jr.	2-6-62
Willie R. Bloylock	2-7-62
Georgia L. Alford	2-7-62
Doris M. Baker	2-8-62
[fol. 1714]	
Horace T. Overby	2-20-62
Berten M. Sellers	2-21-62
Tomie P. Sellers	2-21-62
Patsy I. H. Gammons	2-22-62
Theodore C. Glover, Jr.	2-27-62
Rufus W. Skinner	3-11-62
Mrs. Johnnie P. Shields	3-1-62
William B. Gunn	3-2-62
Marjorie A. Deace	3-5-62
Kay Frances H. Smith	3-12-62
Miss Rowena Butler	5-14-62
Dallas Shannon	5-30-62
Everette A. Shannon	5-30-62
Albert W. Miller	5-31-62
James B. DuBose	6-6-62
Cecil B. Goforth	6-8-62

Name	Date of Application
Silas M. Jones	6-8-62
James W. Cattles	6-15-62
Thersia A. Otwell	7-20-62
James Norris Holmes	8-27-62
Robert B. Edwards	8-27-62
Kinley Steve Tucker	9-4-62
Franklin Meredith Sharp	9-12-62
Walter Robert Brown	9-14-62
Travis Donald Maiden	9-14-62
Mack Auston Killen	9-14-62
Sidney Frances Mars	9-28-62
John R. Carroll	10-3-62
Leroy C. Collins	10-11-62
Mary A. Fleming	11-15-62
Marion I. Martin	11-26-62
Duanne Roberts	12-4-62

The following group (14 white, 1 unknown) varied from the first group only by one letter, and wrote:

"No one can be placed in prison for a debt."

Name	Date of Application
Leonard L. Brown	12-11-61
George E. Thomas, Jr.	1-22-62
Harold C. Bacustou	1-30-62
Nettie R. Thompson	1-31-62
Mrs. Alma M. Bontwell	1-31-62
Mrs. Mary Andreacchio	1-31-62
[fol. 1715]	
Leonard S. Bautwell	1-31-62
David J. Faucette, Jr.	2-2-62
Adell R. Morgan	2-8-62
Carolyn Sue Burrage	2-21-62
Mrs. Mary M. Wakeland	2-26-62
Jewel P. Williams	3-6-62
Robert W. Jackson	6-6-62
Lona H. Carroll	10-3-62
Robert A. Kidd	10-31-62

The following applicants (13 white, 1 unknown) wrote:

"No one can be put in prison for debt."

Name	Date of Application
Marion W. Collins	9-18-61
Floyd M. Homick	1-8-62
Curtis J. Rose	1-22-62
Marion W. Hughes	1-22-62
Sara C. (A. M.) Brown	1-23-62
Nola T. (V. L.) Rhodes	1-23-62
Letetia A. Ethridge	1-26-62
Norine E. Curran	1-30-62
Edwin O. Brown	1-31-62
Willard I. Clearman (Mrs. Floyd)	1-31-62
Otha C. Grossett	1-31-62
Lucille Moore	1-31-62
Mrs. Ann M. Welch	1-31-62
Sharon D. Hedgpeth (Mrs. J. W.)	5-4-62

The following applicants (16 white, 2 unknown) wrote:

"No one can be put in jail for debt."

Name	Date of Application
Buron M. Tolbert	1-12-62
Charles Hazuewood	1-15-62
Ruth (M. L.) Linton	1-22-62
Mamie A. Hughes	1-22-62
Roy A. Walker	1-23-62
Horace L. Autrey	1-24-62
Dorothy L. P. Rayner (Mrs. E. L.)	1-25-62
[fol. 1716]	
Jack E. Wells	1-30-62
Rufus A. Rowson	1-30-62
Alvin L. Cattett	1-31-62
Ethel L. B. Wells	1-31-62
Grace Fagan (Mrs. R. M.)	2-5-62
James S. Boutner	2-26-62

Name	Date of Application
Oscar H. Pruett	6-4-62
Jewell P. Pruett	6-4-62
Shirley Poole Knight	9-20-62

The following applicants (5 white) all wrote:

"No one can be placed in jail for debt."

Name	Date of Application
Winfred N. Watts	1-19-62
Barbara J. Britt	1-29-62
Emma G. W. Spence	1-29-62
Tonie L. Ragsdale	3-15-62
Amanda Lee P. Stewart	10-22-62

The following applicants (4 white, 1 unknown) all wrote:

"No one can be placed in prison for debts."

Name	Date of Application
Bobby J. Griffin	10-10-61
Sara A. Wyche	1-19-62
Glemore W. Brome	1-23-62
Bennie F. Lucray, Jr.	1-31-62
Edna B. Sumrall	6-1-62

The following applicants (3 white, 3 unknown) all wrote:

"No one shall be placed in prison for debt."

Name	Date of Application
Archie D. Wright	1-19-62
Sue C. Otner	2-6-62
Samuel H. Hairston, III	2-19-62
Angella G. Thompson	5-31-62
Ruby L. Byrd	5-31-62
Joyce Davis Tucker	9-3-62

[fol. 1717] The following applicants (5 white, 1 unknown) attempted to write a standard interpretation but came out, instead, with a statement within a word of the following:

"No one can be placed imprisonment for debt."

Name	Date of Application
Howard Clearman	1-22-62
Willie D. Kenard	1-26-62
James T. Brand	1-30-62
James E. Smith	2-23-62
Oscar L. Morgan	6-25-62
Avaree Gardner	9-28-62

The following applicants (36 white, 2 Negro, 6 unknown) wrote standard interpretations which, while not verbatim, retained the general structure of the verbatim answers and repeated rather than explained the word debt:

Name	Date of Application
James E. King (Negro)	2-2-61
Mrs. Mittie E. Hitt	9-27-61
Oren L. Waddell	1-2-62
Sadie J. Posey (Mrs. C. K.)	1-15-62
James E. Jackson	1-16-62
Vernon A. Tice	1-18-62
Garlon P. Acker	1-19-62
Patricia (W. L.) King	1-22-62
Cecil K. Posey	1-22-62
Walter S. Tarrance	1-23-62
Mamie E. Banes	1-26-62
Richard Lawson	1-26-62
Irene E. McMullan	1-29-62
Patsy M. Spence	1-29-62
Edna B. (L. C.) Stewart	1-29-62
Sylmon L. Wilson	1-29-62
John D. Danard (Negro)	1-30-62
Charlie L. Mosley	1-30-62
Betty Lou Tuney	1-30-62
Annie K. B. Ward	1-30-62

Name	Date of Application
Lola M. Allen	1-31-62
Robert G. Beasley	1-31-62
[fol. 1718]	
Thelma H. Betts (Mrs. Adrian B.)	1-31-62
Harry A. Gammons	1-31-62
Hazel S. (Mrs. C. A.) Gibson	1-31-62
Sara P. B. Jenkins	1-31-62
Hazel E. Thrash	1-31-62
Mary Ann Touchstone (Mrs. A. D.)	1-31-62
Clarence R. Hanna	2-1-62
John L. Slampley	2-1-62
Mrs. Gaynell G. Barber	2-2-62
Mrs. Bobby W. Smith	2-2-62
Edwin D. Price	2-5-62
Mrs. Clara Morgan	2-9-62
Mrs. Hilda C. Agent (Mrs. Jack)	2-12-62
Mrs. W. M. Jennings	2-13-62
Rita Faye McDuffie	2-15-62
Mims E. Johnson	2-23-62
Shirley M. Williams	7-2-62
Dorris Lorraine George	8-28-62
Willard Wayne Hughes	9-21-62
Flora Vivian Williams	9-27-62
Samuel C. Burton	10-5-62
Johnnie E. Driskill	10-15-62

Twenty-six applicants, all white, wrote standard interpretations of Section 30 in a single day (January 31, 1962). Nineteen wrote "No one can be placed in prison for debt."

Section 123

Section 123 reads as follows:

"The governor shall see that the laws are faithfully executed."

The following applicants (13 white, 1 Negro, 1 unknown) wrote verbatim as their interpretation of Section 123:

"The governor shall see that the laws are carried out."

[fol. 1719]

Name	Date of Application
Rita W. Riley (Mrs. J. S.)	9-25-61
Carl D. Harper	12-18-61
Neppie H. Carmichael	1-4-62
Mrs. R. A. Phillips	1-9-62
Pearl M. Williams	1-9-62
Ruby J. Thompson	1-19-62
Billie J. Burt	1-26-62
Eugene W. Dubuisson	2-1-62
Marvin A. Moody	3-13-62
Meredith W. Koonce	3-29-62
Eva C. Miller	5-31-62
John R. Mayatt, Jr.	7-27-62
Lula Savell	10-5-62
Carolyn L. Gates	10-15-62
Bobby J. Barrett	11-8-62
Ida Mae N. Ford (Negro)	12-6-62

The following applicants (14 white, 3 unknown) wrote interpretations of Section 123 which varied only by one or two words from those in group 1, and all used the expression "carried out."

Name	Date of Application
Josephine A. Rutledge (Mrs. J. G.)	10-11-61
Curtis W. Bush	11-2-61
Mavis S. Richie	1-16-62
Dorothy A. Johnson (Mrs. C. L.)	1-19-62
William J. Rigdon	1-23-62
Nora E. Walker (Mrs. R. A.)	1-23-62

Dennis E. Richie	1-24-62
Mrs. Lewis J. Menas, Jr. (Alice)	1-26-62
Virgil L. Price	1-30-62
Mamie D. Rawson (Mrs. G. C.)	1-31-62
Norma R. Johnson (Mrs. E. E.)	1-31-62
Walter W. Sylvester	2-26-62
Dan E. Duett	7-25-62
George H. Hester	6-4-62
Ann L. Davis (Mrs. Ronald C.)	6-15-62
Maye H. Lawson	6-19-62
Merle M. Taylor	12-4-62

[fol. 1720] 2. Statement of Duties and Obligations of Citizenship

Identical and similar statements of the duties and obligations of citizenship are even more apparent in Lauderdale County than identical and similar constitutional interpretations. Many of the persons with standard statements of duties and obligations of citizenship also have standard interpretations.

One hundred eight applicants (91 white, 4 Negro, 13 unknown) have verbatim or almost verbatim statements of the duties and obligations of citizenship as the following:

> "I, as a citizen, pledge allegiance to the Constitution of the U.S.A. and the state of Mississippi and will faithfully support same."

Seventy-nine of these 108 applicants also have standard constitutional interpretations. Twenty-two of the standard statements occurred on January 31, 1962 and twelve each on January 29 and 30. Of the 46 applicants who wrote standard statements during these three days, 41 were white, one a Negro, and four unknown. Twenty-six also wrote standard constitutional interpretations.

The 108 applicants with this standard statement, arranged chronologically, are as follows:

Name	Date of Application
Jaunice T. Norwood	3-21-61
Ann LaFavour	9-22-61
Glenda A. Allen	9-29-61

Name	Date of Application
Anne S. Bell	10-13-61
Kenneth W. Pouncey	10-19-61
Alton A. Parten	10-25-61
Daniel E. Wedgeworth	10-31-61
Hubert B. Weekley	11-28-61
Leonard L. Brown	12-11-61
Lara B. C. Rutledge	1-2-62
[fol. 1721]	
Oren L. Waddell	1-2-62
Mrs. David G. Culley (Elizabeth J.)	1-8-62
Jimmie L. McDuffie	1-8-62
Mabel R. Orr	1-12-62
Buron M. Tolbert	1-12-62
Florence H. Hill	1-15-62
Rubye H. Hargon	1-17-62
Elsie M. McKinney (Negro)	1-18-62
Dorothy F. Acker	1-19-62
Garlon P. Acker	1-19-62
Sara A. Wyche	1-19-62
Winfred N. Watts	1-19-62
Patricia A. M. Watts	1-19-62
Thomas E. George, Jr.	1-22-62
Annie M. Harding	1-22-62
Howard Clearman	1-22-62
Ray A. McFailens	1-24-62
Pauline A. Rowell	1-24-62
Houston L. Boler (Negro)	1-25-62
Marie B. LeFord (Mrs. W. M.)	1-25-62
Willie L. Davis	1-25-?
Mary G. Chisolm	1-26-62
Willie D. Kenard	1-26-62
Eddie R. Scott	1-26-62
Roy L. Spann	1-26-62
Richard Lawson	1-26-62
Mamie E. Banes	1-26-62
Patsy M. Spence	1-29-62
Emma G. W. Spence	1-29-62
Edna B. Stewart (Mrs. L. C.)	1-29-62
Rupert Freeman	1-29-62

Name	Date of Application
Donna S. Castle	1-29-62
Virgil David Scarbrough	1-29-62
Ethel I. T. Switzer	1-29-62
Edna P. Stone	1-29-62
Barbara J. Britt	1-29-62
Eula M. Smith (Mrs. M. R.)	1-29-62
Martha O. Johnso[illegible]	1-29-62
Dorothy Faye Smith (Mrs. I. H.)	1-29-62
Nita Broadhead	1-30-62
Ruth Luke	1-30-62
John D. Danard (Negro)	1-30-62
Betty Lou Toney	1-30-62
Harold C. Bacustou	1-30-62
Cumberland, Richard A.	1-30-62
Annie K. B. Ward	1-30-62
[fol. 1722]	
Charlie L. Mosley	1-30-62
James T. Brand	1-30-62
Charles W. Webb	1-30-62
Lonnie Luke	1-30-62
Mrs. Elliott I. Burt	1-30-62
James J. McCarty	1-31-62
Sarah R. Combs	1-31-62
James A. Gibson	1-31-62
Roy M. Alexander	1-31-62
Ruth K. Holt	1-31-62
Alice G. Thrash	1-31-62
Clara F. Webb	1-31-62
Mary P. Melton (Mrs. C. M.)	1-31-62
Frank F. Alley	1-31-62
Leonard S. Bautwell	1-31-62
Harry A. Gammons	1-31-62
Thelma H. Betts (Mrs. Andrian B.)	1-31-62
Alvin L. Cattett	1-31-62
Robert G. Beasley	1-31-62
Carolyn S. Espey	1-31-62
Louis J. Bailey, Jr.	1-31-62
Elouise F. McKee (Mrs. Edward)	1-31-62
John B. Jones	1-31-62

Name	Date of Application
Willie G. Bogan	1-31-62
Mrs. June W. Gullett	1-31-62
Ruth C. Way	1-31-62
Edward A. Townsend	1-31-62
Billie J. Harper	2-1-62
Delia D. Manley (Mrs. C. Y., Jr.)	2-1-62
David J. Faucette, Jr.	2-2-62
Sue C. Otner	2-6-62
Bob C. Harper	2-6-62
Georgia L. Alford	2-7-62
Willie R. Blaylock	2-7-62
Horace S. Boswell	2-9-62
Hilda C. Agent (Mrs. Jack)	2-12-62
Berten M. Sellers	2-21-62
Mims E. Johnson	2-23-62
Mrs. Mary M. Wakeland	2-26-62
Theodore C. Glover, Jr.	2-27-62
Mrs. Johnnie P. Shields	3-1-62
William B. Gunn	3-2-62
Marjorie A. Deace	3-5-62
Jewel P. Williams (Mrs. J. H.)	3-6-62
Mrs. H. T. Overby	3-12-62

[fol. 1723]

Albert W. Miller	5-31-62
Edna B. Sumrall	6-1-62
Cecil B. Goforth	6-8-62
James W. Cattles	6-15-62
Ralph E. Johnson (Negro)	6-20-62
Jo Ann R. N. McCloy	6-22-62
Spencer R. Martin	11-26-62

Fifteen applicants (13 whites, 2 unknown) wrote the same statement of duties and obligations of citizenship as those in group 1, except that they omitted the phrase "as a citizen". Eleven of them also had standard constitutional interpretation. Their statements, with very small variations, read as follows:

> "I pledge allegiance to the Constitution of the United States and the state of Miss. and will support the same."

The persons in this group, arranged chronologically, are as follows:

Name	Date of Application
John B. Wood	8-7-61
Margaret E. Lovett	9-27-61
Norman M. Rutledge	10-3-61
Virgil L. Foster	11-28-61
Reginald J. DuFour	1-29-62
Marie H. McLemore	1-29-62
William A. Robinson	1-30-62
Rachel B. May	1-31-62
Gerald E. Barham	1-31-62
Nettie R. Thompson	1-31-62
Gloria E. Easom	1-31-62
Doris M. Baker	2-8-62
Horace T. Overby	2-20-62
Kay Frances H. Smith	3-12-62
Bobbie L. Jenkins	6-1-62

[fol. 1724] Fifty applicants, (43 white and 7 unknown), wrote a variant of the statement in groups 1 and 2, approximately as follows:

> "I, as a citizen, will obey and support the Constitution of the United States at all times."

These statements are not verbatim, but they all contain enough of this phraseology to compel the conclusion that they had a common source. Their names, arranged chronologically, are as follows:

Name	Date of Application
Sylvia A. Watson	3-20-61
Tommi W. Crenshaw	8-2-61
Thomas R. Singley	8-4-61
Patricia King (Mrs. W. L.)	1-22-62
Billy H. Williams	1-28-62
Homer W. Roberts	1-29-62
Irene E. McMullan	1-29-62
Beatrice Misrok	1-30-62
Norine E. Curran	1-30-62
Cecil M. Alavine (Mrs. R. L.)	1-31-62
Linda W. Barrack (Mrs. C. B.)	1-31-62
Bennie F. Lucray, Jr.	1-31-62
Mrs. Alma M. Bontwell	1-31-62
Kennib C. Walker	1-31-62
Gladys F. Lawrence	1-31-62
Mary Alice Stewart (Mrs. Junior)	1-31-62
Sara P. B. Jenkins	1-31-62
Lola M. Allen	1-31-62
Margie C. Turner	1-31-62
Lucinda Peacher, Jr.	2-1-62
Kaye F. Rutledge	2-1-62
Myrtle Ruth B. Faucette	2-2-62
John W. Stewart, Jr.	2-6-62
Adell R. Morgan (Mrs. C. V.)	2-8-62
Mrs. Clara Morgan	2-9-62
Samuel H. Hairston, III	2-19-62
Darwin E. Stifflemire	2-20-62
Carolyn Sue Burrage	2-21-62
Patsy I. H. Gammons	2-22-62

Name	Date of Application
Dorothy B. Lendley	3-1-62
Rufus W. Skinner	3-1-62
Philip H. McWilliams	3-8-62
[fol. 1725]	
Glenda F. Rutledge	5-4-62
Dallas Shannon	5-30-62
Everette A. Shannon	5-30-62
Ruby L. Byrd	5-31-62
Angella G. Thompson	5-31-62
Robert W. Jackson	6-6-62
Shirley M. Williams	7-2-62
Maurice L. McDonald, Jr.	7-13-62
Therisia A. Otwell	7-20-62
Ernest L. Roberts	8-1-62
Leona M. Wise	8-3-62
James Norris Holmes	8-27-62
John Thomas Russell	9-11-62
Travis Donald Maiden	9-14-62
Sidney Frances Mars	9-28-62
Leroy C. Collins	10-11-62
Marion I. Martin	11-26-62
Duanne Roberts	12-4-62

The following six applicants, (five white, one unknown), wrote statements of duties of citizenship which contain obvious but unsuccessful attempts to write standard language in their statements of duties and obligations of citizenship:

Name	Address	Date of Application
(a) James P. Shelton (W)	Toomsuba	1-29-62

"I *plead the leagin* to the constitutional of the U.S. vote obey laws."

(b) Jamie P. Sellers (W)	3442 17th Ave. Meridian	2-21-62

"I, as a citizen of the U.S.A., I pledge allegiance to *faith and support* the Constitution, both federal and loc'al.

(c) James H. Edwards (W)	1306 45th Ave. Meridian	1-31-62

"I will *face a support* the constitution of U.S.A. I stat of Miss. and I will support it at all times."

[fol. 1726]

Name	Address	Date of Application
(d) Robert A. Kidd (W)	1722 21st St.	10-31-62

". . . I do *pay allegiance* to the flag of my country at all times."

(e) Joseph W. Anders (U)	1514 16th Ave. Meridian	6-13-62

"I shall *bare alligence* to the constitution of the United States and the State of Mississippi."

(f) Roy E. McPherson (W)	Rt. 7, Meridian	2-2-62

"It is my duty as a citizen to *pay allegiance* to the Constitution of the U.S.A. and the state of Mississippi at all times."

The following 40 applicants (35 white, 4 unknown, 1 Negro) wrote statements of duties and obligations of citizenship containing, with only very slight variation, the phrase "loyal to God and country". Fourteen of them also have standard constitutional interpretations:

Name	Date of Application
Geraldine W. Bagley	1-15-62
Wayne Bagley	1-15-62
James E. Jackson	1-16-62
Dorothy A. Johnson (Mrs. C. L.)	1-19-62
Glemore W. Brome	1-23-62

Name	Date of Application
William J. Rigdon	1-23-62
Carl R. Scarlet	1-23-62
Nora E. Walker (Mrs. R. A.)	1-23-62
Horace L. Autrey	1-24-62
Barbara A. Boyd (Mrs. R. L.)	1-25-62
Louise Broadhead (Mrs. H. L.)	1-25-62
(Leona) Grace Cardwell (Mrs. H. K.)	1-26-62
Sylmon L. Wilson	1-29-62
Bonnie J. Roberts (Mrs. H. W.)	1-30-62
Louise H. Billingsley (Mrs. W. J.)	2-1-62
[fol. 1727]	
Robert M. Fagan	2-5-62
Carol Crawford (Mrs. E. G.)	2-7-62
Jerry R. McClesky	2-7-62
Robert B. Jarman	2-13-62
Mrs. W. M. Jennings	2-13-62
James E. Smith	2-23-62
Lottie O. Richardson	3-9-62
Flora Moody (Mrs. M. A.)	3-13-62
Marvin A. Moody	3-13-62
Tonie L. Ragsdale	3-15-62
Jewell P. Pruett	6-4-62
Eula Gipson	6-8-62
Sarrah L. Linton	6-19-62
John R. Anderson	6-29-62
James A. Harris	8-21-62
Max C. Morris	8-24-62
George William Denton Farr	9-12-62
Bobby Joe Evans	9-26-62
Willa Dean Keeton Evans	9-26-62
Dorothy J. Wilson	10-5-62
Carolyn J. Thomas	10-15-62
William D. Frazier	10-16-62
Levurn P. Harper (Negro)	11-15-62
Charles W. Moseley	12-4-62
Merle M. Taylor	12-4-62

The following twenty-three applicants, (12 white, 11 unknown), all wrote statements containing the theme of loyalty to the government:

Name	Date of Application
Betty W. Moring	8-25-61
Mrs. Bennie R. Butler	9-7-61
Rita D. (Ryals) Boatnes	1-9-62
Doris L. Jones	1-29-62
Elsie M. Knight Wright (Mrs. R. W.)	1-29-62
James M. Bateman	1-30-62
Mavis L. E. Fagan	1-31-62
Mrs. Charles L. Harper	1-31-62
Dorothy L. Smith	1-31-62
Maryland L. Watson	1-31-62
Irene G. MaGill	2-1-62
Mary V. Pettey	2-1-62
[fol. 1728]	
Virginia M. Temple	2-2-62
Christine M. Callaway	3-5-62
Mary Helen M. Sylvester	6-8-62
James E. Mardis	7-9-62
Elsie J. Mayatt	7-27-62
John R. Mayatt, Jr.	7-27-62
Dorris Lorraine George	8-28-62
Samuel C. Burton	10-5-62
Johnnie E. Driskill	10-15-62
Carolyn L. Gates	10-15-62

The following three white applicants, all of whom applied on January 29, 1962, wrote the following verbatim statement of duties and obligations of citizenship.

> "Obey laws vote and take part in all things for the betterment of things always be loyal."

They also had substantially identical constitutional interpretations of Section 30.

Name	Date of Application
Doris B. Whatley (Mrs. N. E.)	1-29-62
Louise K. Kinnard (Mrs. J. B.)	1-29-62
Jacob B. Kinnard	1-29-62

The following eight applicants (6 white and 2 Negro) wrote substantially the following (only three are practically verbatim):

"My duties under a constitutional form of government is to uphold the Constitution of the U.S.A. and state of Mississippi and support same at all times."

[fol. 1729]

Name	Date of Application
James H. Coulter	1-26-62
Billie J. Burt	1-26-62
Winona H. Watkins	5-10-62
Miss Rowena Butler	5-14-62
Silas M. Jones	6-8-62
Avaree Gardner	9-28-62
Lona H. Carroll.	10-3-62
John R. Carroll	10-3-62

c. Grading of the Application Form

1. Questions 19 and 20

Because of the large numbers of standard interpretations and statements of the duties and obligations, the question of grading was seldom applicable. White applicants who wrote erroneous interpretations and statements of duties and obligations were nevertheless accepted. There are three known white rejected applicants, 2 left questions 19 and 20 blank and the other wrote answers which are not comprehensible.

Two accepted white applicants (and 1 unknown but believed to be white) merely recopied the section of the constitution as their interpretations:

1. Bonnie Boykin, Rt. 3, Meridian, 1-12-62, Sec. 123.
2. Carolyn Davis, Rt. 6, Meridian, 1-29-62, Sec. 30.
3. Robert H. Bunyard, Causeyville, 1-19-62, Sec. 30.

The following groups of applicants, all white or believed to be white, were accepted in spite of wrong interpretations of Section 30:

[fol. 1730] Four applicants (three white, one unknown) had standard interpretations but wrote "death" (in two cases misspelled) instead of "debt". They were:

Name	Date of Application
Nita Broadhead	1-30-62
Ruth Luke	1-30-62
Maurice L. McDonald, Jr.	7-13-62
Robert L. Spears	8-7-62

Four applicants (three white and one unknown) interpreted Section 30 to mean, that a person may not be imprisoned for any reason, without mentioning "debt":

Name	Date of Application
Margaret E. Lovett	9-27-61
Milton T. Fulton	1-26-62
Bonnie J. Roberts (Mrs. H. W.)	1-30-62
Claire J. Wright (Mrs. A. D.)	6-29-62

Two applicants, both white, wrote interpretations of Section 30 which were unintelligible:

Name	Date of Application
Charlie H. Swanner	1-31-62
James H. Edwards	1-31-62

The following accepted applicants, all white, wrote wholly unresponsive answers to Question 20, the first two merely repeating their constitutional interpretation:

Name	Date of Application
Mary E. (May) Day	9-22-61
Bonnie Boykin (Mrs. L. E. B.)	1-12-62
Ruby H. N. Peere	11-14-61

[fol. 1731] 2. Perfect Form Requirement (other than questions 19 and 20)

In Lauderdale County no applicant is required to complete all the blanks on the form. Omitted questions on the form and omitted signatures were either brought to the applicant's attention by check marks or simply left blank. No applicant was rejected on the basis of the perfect form requirement.

[fol. 1732] Part III

The following is a list of Negroes who have been deprived of the right to vote as indicated. The numbers beside their names are the identifying numbers given in answer to interrogatories Nos. 23 and 24 of the State of Mississippi. Specific registration experiences, if any, are set out in Part I above. If the name bears no identifying number, the Lauderdale County application forms have been used to determine whether the applicant should be included.

a. The following nineteen Negro applicants for registration in Lauderdale County are believed to have been deprived of the right to vote because of the constitutional interpretation test:

Number	Name	Date of Application
33058	Mamie D. Wooten	3-22-60
	Beatrice Madison	1-17-61
	Maggie B. Sweetner	1-18-61
38004	Robert H. Chess	1-20-61
38018	Ida M. Ford	1-26-61
38001	Amelia K. Bishop	1-30-61
	Mary A. Stennis	1-30-61
38041	Ulpiana P. Sims	1-30-61
38040	Annie Simmons	1-30-61
38037	Sarah Pollard	2-1-61
38029	Pearl E. Ivy	2-1-61
38019	Mrs. Alberta Gordon	3-8-61
	Smiley D. Gibson	6-12-61
	Hilda R. Ford	7-11-61
38030	Robert L. Johnson	1-30-62
38023	Henry Hearn	1-31-62
	Audry W. Hughes	1-31-62
38046	Ollie V. Sykes	1-31-62
	Mrs. Willie M. Clark	7-23-62

[fol. 1733] b. The following two Negro applicants were deprived of the right to vote because of the duties and obligations test. The four with asterisks were subsequently registered.

Number	Name	Date of Application
38058	Mamie D. Wooten	3-21-61
38018	Ida M. Ford	2-16-61
38048	Mrs. Exie Thomas*	3-7-61
	Mrs. Eva B. Craft*	3-7-61
	Florence D. Butler*	3-7-61
38055	Lurrie Willis*	3-7-61

[fol. 1734] Neshoba Co. #63

Part I

A

The following Negro citizen of Neshoba County was not permitted to register to vote at the Circuit Clerk's office in Neshoba County.

50001 About 1956 Refused Richardson-R

Went alone to register. Registrar stated Negroes not allowed to register.

[fol. 1734a] Noxubee #65

Part II.

Application Forms

1&2. Number of Application Forms

Period includes forms from 1/14/61 to 7/20/63.

White

Accepted	276
Rejected	0

No Negro forms

3. Analysis of Forms

a. Selection of Constitutional Sections.

Section	No. of applicants.
20	17
30	21
34	12
35	31
50	7
67	12
100	9
114	10
128	11
130	21
143	14
153	6
164	6
209	9
250	6

The remaining applicants were asked to interpret one of 30 or more other sections of the Mississippi Constitution.

b. Assistance to White Applicants.

(1) An analysis of the application forms shows many similarities in the answers to question 9 (interpretation). [fol. 1735] (a) The following registrants all had the phrase "under the law" or some variant thereof in their interpretation.

Section 20

Date of Application	Name	Interpretation
3-25-61	Butler, Henry Ray	Under the Mississippi law no citizen can be elected to office for life.
12-27-61	Wright, Henry L.	Under the Mississippi law no person can be elected for life.
1-8-62	Conner, Nellie R. Mrs.	Under the Mississippi law ever person elected to office shall be for a specified period.

Section 22

Date of Application	Name	Interpretation
9-2-61	Boykin, Franklin Eugene	Under the Mississippi law no person should be tried for the same crime twice.

Section 30

Date of Application	Name	Interpretation
12-30-60	King, Douglas Raymond	Under the constitution of Mississippi a person cannot be jailed for debt.
[fol. 1736]		
1-16-61	Bryan, Velma Lee	Under the Mississippi law you cannot put a person in jail for a debt.
1-31-62	Cotton, Lonnie Eugene	Under the Mississippi law no person can be put in jail for a debt.
2-17-62	Person, Myrtle L.	Under the Mississippi law you cannot put a person in jail for a debt.
2-24-62	Higgenbathon, Henry Clay	Under the Mississippi law no one shall be put in jail for a debt.
7-10-62	Berryman, Howard Grady	Under the Mississippi law you cannot put a man in jail on account of a debt.
10-3-62	Boykin, Jesse David	Under the Mississippi law you cannot put a man in prison for debt.
5-31-63	McArthur, Grace S.	Under the constitution you cannot put a person in jail for debt.

Section 34

Date of Application	Name	Interpretation
4-;6-62	Pendergrass, Barbara Jane	Under the Mississippi law the members of the house of representatives is elected every four years by the qualified electors of the counties of representative district.
[fol. 1737]		

Section 35

Date of Application	Name	Interpretation
1-25-61	Dunn, Alice Grey	Under the Mississippi law the members of senters is elected ever four years.

Section 57

Date of Application	Name	Interpretation
1-28-61	Cooper, Betty L. Mrs.	Under the law, neither house adjourn for more than three days without the consent of the other.

Section 67

Date of Application	Name	Interpretation
10-26-41	Hines, John D. Mrs.	Under the Mississippi law the legislation cannot introduce a new bill during the last 3 days of session.
5-11-62	Moore, Alma Inez	Under the Mississippi Law no bill should be introduced into the house in the last three days of the session.

Section 114

Date of Application	Name	Interpretation
1-26-62	Nance, Jule Harris	Under the Mississippi law, all election return will have to be made to the secretary of state.
[fol. 1738]		
5-1-62	Cord, Delbert Richard	Under the Mississippi law all elections returns is made through the Sec. of state.

Section 116

Date of Application	Name	Interpretation
6-7-60	Simpson, Marjorie Waiernecc	Under the law the Chief Executive cannot succeed himself within 4 years.

Section 130

Date of Application	Name	Interpretation
1-15-62	McBryan, Malcom Eugene	Under the Mississippi Construcgion of the speaker of the house of representatives draw the same salary.

Section 164

Date of Application	Name	Interpretation
2-1-62	Bolin, Wayne Prentis	Under the Mississippi law the chancery court meets twice a year.
2-2-62	Jerrygigan, Henry Lamar	Under the Mississippi Constitution chancy court one held twice a year in each county of the State.
2-21-62	Kimbrill, James Thomas	Under the Mississippi Const. chancery court is held each in their county twice a year.
[fol. 1739] 2-7-63	Eaves, Tommy Oswen	Under the law all chancery courts shall be held twice a year.

Section 207

Date of Application	Name	Interpretation
2-14-62	Guyton, Janet Holliman	Under the Miss. law there shall be separate school for the races.

Section 250

Date of Application	Name	Interpretation
2-8-62	Cooper, Lary Bailey	Under the constitution no one is eligible for office unless he is a qualified elector, or otherwise provided in the constitution.

Section 265

Date of Application	Name	Interpretation
1-30-62	Cotton, Sarah Estes	Under the Mississippi Co stitution anyone who doesn't believe in God cannot hold an office.
2-5-62	Flake, Marjorie Ann	Under the Mississippi Constitution no persone who do not believe in the supreme being shall not haold any office in the State.

[fol. 1740] (b) The following registrants all begin their interpretation of section 35 of the Mississippi Constitution with the words: "The members . . ."

Date of Application	Name	Interpretation
6-24-60	Ward, Eunice Mrs.	The members of senate is chosen by ghe qUALIFIED electors every four years.
7-5-60	Prince, Elizabeth Claire	The members of the senate are to be chosen every four years by qualified electors.
10-23-62	Bell, Ona G. Mrs.	The members of senate are lected every four years, by qualified electors.
12-7-62	Richardson, Herbert	the memberl is elected evory ford uear by the qualified elecctorl
1-15-62	Wright, Elizabeth Lypsey	The members of the senate are elected by the qualified voters of the districts every four years.
1-28-63	Harrell, Floyd Seaborn	The members is elected every four years by qualified electors.
3-2-63	Pike, Stella C.	the members of the senate is Elected Ever four years
5-6-63	Coch, Bobby Earl	the member of sentry in Election in every four years by the qualified electors
[fol. 1741]		
5-11-63	Dawkins, Betty Jean C.	The members of the senate are chosen by the qualified election every four years.
5-27-63	Lane, Robert Charles	The members of the senate shall be chosen for a term of four years by the qualified voters in each district.
6-10-63	Vaughn, William Vivian, Jr.	The members of the senate are elected by the people qualified to vote in the several districts of the state and are chosen for a four term.

(2) Similarities in the answers to question 20 (duties and obligations) are also evident.

(a) The following 42 registrants included in their answer to question 20 some or all of the "four freedoms." These are Freedom of speech, of assembly, of press and of religion.

Date of Application	Name	No. of "Freedoms" in answer
6-3-60	Gavin, Charlie C.	2
6-7-60	Simpson, Marjorie Waiernecc	3
6-9-60	Treshour, Louis Taylor	2
12-16-60	Jelly, Lucille Lee Mrs.	2
1-25-61	Dunn, Alice Grey	1
1-30-61	Sanasing, Leesie Taylor Mrs.	3
2-6-61	Robbins, Elizabeth F.	3
6-21-61	Boykin, Patsy	3
9-2-61	Boykin, Franklin Eugene	2
10-17-61	Woodward, James Thomas	3
11-24-61	Ferris, Douglas M.	3
12-27-61	Wright, Henry L.	3
[fol. 1742]		
1-15-62	Wright, Elizabeth Lypsey	3
1-30-62	Cotton, Sarah Estes	1
2-7-62	Hizer, Howard H.	2
4-16-62	Pendergrass, Barbara Jane	1
5-8-62	Megehee, Margaret Ann S.	2
5-9-62	Gentry, Mildred Annette	2
6-5-62	Hunter, Harold King	2
6-13-62	Higgenbathen, William Traws	2
7-10-62	Berryman, Howard Grady	3
8-3-62	Hailey, Shirley R.	2
8-6-62	Culwell, Betty Lane	2
10-23-62	Bell, Ona G. Mrs.	3
10-23-62	Bell, Charles G.	3
12-7-62	Richardson, Herbert	2
1-3-63	Brady, Joseph Armon	2
1-19-63	Butler, Arthur Gerald	3
1-22-63	Taylor, Glenda Miller	3
1-26-63	White, Maggie Faye	3
1-27-63	Vernon Margaret Virginia	1
3-2-63	Pike, Stella C.	2
3-8-63	Chambers, Thomas A.	3
3-15-63	Coleman Cleveland Douglas	4
3-18-63	Person, Thomas Earl, Jr.	3
4-3-63	Knepp, Edwin J.	2
4-6-63	Butler, Maxine	2
4-16-63	McRright, Robert Charles, Jr.	3
4-24-63	Boykin, Ina D. V.	2
5-11-63	Thompson, Laudive Rea Regus	3
5-17-63	Thompson, Luois, Kr. Mrs.	2
6-3-63	King, William Ernest	33

(d) The following applicants included in their answer to question 20 a statement to the effect that we may worship and/or vote as we see fit or as we please.

Date of Application	Name
6-24-60	Ward, Eunice Mrs.
1-16-61	Bryan, Velma Lee

[fol. 1743]

1-26-62	Nance, Jule Harris
2-5-62	Flake, Marjorie Ann
2-14-62	Guyton, Janet Holliman
5-25-62	Otis, Bessie S.
6-23-62	Lee, James M.
10-30-62	Lee, Betty Mary
12-29-62	Eaves, Gloria Jean W.
1-12-62	Higginbothom, Mary
1-26-63	Cooper, Betty Jean
2-15-63	Ratcliff, Nona Mae
4-13-63	Poas, Harry Edgar Jr.
4-27-63	Higginbothan, Betty
7-9-63	Pauloin, Riviea Victoria

(b) The following 14 registrants have in their answer to question 20 the words "support the const."

Date of Application	Name	Answer to Question 20
1-26-62	Conner, John L.	It shall be the duty as a citizen to support const and abide by the laws.
4-7-62	Richardson, Helen Irene	it is my duty to support the consts in abide by the laws.
5-1-62	Cord, Delbert Richard	It shall be the duty of every citizen to support the const of our state and see the law be enforced by the one in charge.
11-14-62	Vernon, Doris I. H.	It shall be the duty of every citizen of this state to support the const, and abide by the laws set forth under the court.
1-12-63	Higginbuthum George L.	As a citizen it is my duty to support the const of this state and abide by its laws.

[fol. 1744]

1-26-63	Butler, Roy Philip	It is my duty to support the const. of our state.
1-28-63	Harrell, Floyd Seaborn	It is my duty to support the const and abide by its laws.

Date of Application	Name	Answer to Question 20
2-4-63	Berryman, Eva Blanch	My duty is to support the const and uphold the laws.
2-27-63	Cockrell, M. B.	It is my duty to support the const of this state and abide the laws.
3-18-63	Schrock, Ezra	It is my duty to support the const of this state and abid by its laws
3-20-63	Lee, Menno L.	It ios my duty as a citizen to support the const of our state
5-6-63	Coch, Bobby Earl	It is my duty to support the const of the state and abaide by the laws
6-6-63	Schrod, Rudy J.	It is the dutee of every citizen to support the const and abid by the laws of our state.
6-10-63	Lee, Lydia Mrs.	It is my duty as a citizen to support the const and abid its law.

(e) The following registrants included in their answer a statement to the effect that our government is supported by/or through taxation.

Date of Application	Name
10-24-60	Ewing, Mary Estelle
1-28-61	Bell, Groyce Virginia
4-18-61	Poulovin, Frank M.
9-2-61	Boykin, Willie James
10-26-61	Hines, John D. Mrs.
[fol. 1745]	
1-20-62	Cockrell, Dorothy Helen
1-26-62	Conner, Eddie Pearl Beasley, Mrs.
1-27-62	Flora, Marjorie Morris
2-2-62	Jerrygigan, Henry Lamar
4-3-62	Pendergrass, William Glenn
4-27-63	Cooper, Tyson Eugene

(f) The following registrants included in their answer to question 20 a statement to the effect that a person may not be tried twice for the same crime.

Date of Application	Name
1-15-62	McBryan, Malcom Eugene
1-30-62	Beaman, Margaret
2-1-62	Bolin, Wayne Prentis
2-2-62	Collins, Mary Elizabeth
4-3-62	Hamill, Vera Eula
2-12-62	Perkins, Kitty D.
3-2-63	Pike, Jesse Davis
3-6-63	Whitehead, Gladys W. K.

c. Grading

(1) Interpretations that are not responsive answers to the section assigned.

(a) The following registrants gave unresponsive answers in interpreting the section assigned them.

Section 35:

"The senate shall consist of members chosen every four years by the qualified electors of the several districts."

Date of Application	Name	Interpretation
4-30-63	Higginbothan, Peggy Sue	The ones chosen to be in the senate will be There because they were trustworthy to be vote in.

[fol. 1746] Section 67:

"No new bill shall be introduced into either house of the legislature during the last three days of the session."

Date of Application	Name	Interpretation
8-5-62	Hailey, Shirley R.	Under Mississippi law eather house or legislature during the last three days of the session.

Section 114:

"Returns of all elections by the people shall be made to the secretary of state in such manner as shall be provided by law."

Date of Application	Name	Interpretation
6-4-60	Rickert, George H.	The above gives to the Secretary of State a general view of the trend of the voting public.

Section 130:

"The lieutenant-governor shall receive for his services the same compensation as the speaker of the house of representatives."

Date of Application	Name	Interpretation
5-1-63	Allsup, Mary H.	The lieutenant-governor acts the same as governor as vice-president to president and is paid the same.

(6) The following registrants gave answers to question 20 which are non-responsive.

Date of Application	Name	Answer to Q. 20
1-24-63	Woodfin, James Barrett	I do fully understand the obligations of a citizen and the constitutional form of gov.
[fol. 1747]		
1-29-63	Permenter, Roger F. Jr.	My understanding of the duties and obligations are the things we can and cannot do under our form of government.
3-13-63	White, Dean Mrs.	Our privileges which we have and the things we can do and can't do under our form of government.
3-16-63	Higginbothan, Ralph R.	Your are suppose to be able to recite the premble of the constitution. You are supposed to be a citizen of the state & country in which you register to vote.
5-31-63	McArthur, Grace S.	Under the const. every one over 21 yrs. old has the right to vote.
6-7-63	Vernan, James Willie	Your duties and obligations to the state and government under the constitution.
6-7-63	Nernan, Marie H.	Your duties and obligations to the state and government under a constitution.

(c) No perfect form requirement.

Seventy-five per cent of the applicants for the period mentioned above leave the final applicant's signature line blank.

[fol. 1748] Forrest #68

Part 1

A

The following Negro citizens of Forrest County were not permitted to apply to register to vote. All events described below occurred in the Circuit Clerk's office in Hattiesburg. In Forrest County the women deputy clerks register white persons.

18125	9/15/55 Refused Woman	He went to the office of the Registrar, but was told by a white lady there that he would have to see Mr. Cox as she could not register him.
18060	9/15/55 Refused Woman	She went to the office of the Registrar and was told by a lady there that he would have to see Mr. Cox as she could not register her.
18056	9/15/55 Refused Woman	He went to the office of the Registrar where he was told by a white lady that he would have to see Mr. Cox as she could not register him.
18037	9/15/55 Refused Woman	He went to the office of the Registrar and was told by a lady there that he would have to see Mr. Cox, as she could not register him.
18021	Early Fall 1956 Refused Cox-R	In the early Fall of 1956, she made another attempt to qualify herself to vote in the Presidential election. She met Mr. Cox in the registration office and again asked if he would allow her to register. Again Cox simply replied, "No, I won't do it."

18021	Spring 1956 Refused Cox-R	In order to try to qualify to vote in the Presidential election of 1956, she paid her poll taxes and went into the registration office in the Spring of 1956. She was waited on by Mr. Cox and told him that she wanted to register. She showed him her poll tax receipts. Cox asked her if she were a school teacher and she replied that she was a housewife. Then Cox said simply that he would not register her now. She asked him why, but he merely repeated that he wouldn't register her.

[fol. 1749]

18082	1956 (Spring) Refused Woman	She attempted to register accompanied by her husband and went to the registration office. They were met by a woman clerk in the office. When they told her that they wished to register she told them that they would have to see Mr. Cox and that he was not in at the time. They returned a few weeks later and again were told by a female clerk that they would have to have to see Mr. Cox who was not there.
18056	April 1956 Refused Cox-R	Went to the office of the Circuit Clerk to register; spoke to Mr. Cox, who first asked if he had someone to teach him how to vote, to which he replied that he did not; Cox then said there was a suit pending and that he would wait until it was settled.
18070	10/16/56 Refused Cox-R	Cox refused to permit him to register.

18070	1956 Refused Cox-R	Mr. Cox told him that he could not register because he had been going to school outside Mississippi, that he would have to wait two years; he said he had not changed his address, but Cox still refused.
18115	About 1956 and 1957 Refused Woman	He went to the clerk's office and asked for Mr. Cox. One of the female clerks told him that Cox was not in. When Stewart asked if this clerk would register him, he was told no, that he would have to wait for Cox. Went again in 1957 and got the same story.
18046	1956 Refused Woman	He went to the registration office alone. He was told by one of the clerks that Mr. Cox was out, in court, and that he would have to see him in order to register.

[fol. 1750]

18117	Jan. 1956 or 1957 Refused Woman	He attempted to register at poll tax paying time in 1956 or 1957. When he went into the registration office one of the clerks told him that Cox was not there and that he would have to come back when Cox was in.
18075	January 1957 Refused Cox-R	He went to the office of the Circuit Clerk to register: Mr. Cox was not in when he arrived, and the lady in the office said she could not register him, that only Cox could do that. He waited for Mr. Cox and when Cox came into the office, he refused to register him and would not give his reason for the refusal.

18077	Jan. 1957 Refused Cox–R	He went to register. Mr. Cox asked him where he lived, where he was from, if he were a member of the NAACP and who sent him. Mr. Cox then told him he had better wait a while.
18013	March 1957 Refused Cox–R	Went to the office of the Registrar and was refused re-registration by Luther Cox; Cox gave no reason for the refusal.
18013	June, 1957 Refused Cox–R	Bourn accompanied Rev. John M. Barnes and one other to the office of the Registrar for purpose of re-registering; Cox refused them, saying something about waiting until a lawsuit was settled.
18056	April 1957 Refused Cox–R	Went to the office of the Circuit Clerk to register, but Mr. Cox said he would have to wait a while and did not give any reason for the delay.
18070	11/7/57 Refused Cox–R	Clyde Kennard went to the office of the Circuit Clerk, accompanied by Rev. John M. Barnes; informed a secretary that they wished to register; secretary said they would have to wait for Mr. Cox, who would be back shortly; when Cox arrived, they told him they wished to register; Cox said he did not think he would register them that day; Kennard asked the reason for the refusal, and Cox asked if they wanted a statement to be used against him and if they be-

[fol. 1751]

18070 Con.	11-7-57 Refused Cox-R	longed to the NAACP; Barnes replied that he did belong to the NAACP, Kennard said he did not, after which Cox walked away; again they requested to be registered, but Cox stated he had nothing further to say, at which point they left the office.
18083	Fall,1957 Refused Woman	Went to the office of the registrar with a group of negroes, including Rev. W. D. Ridgeway and Rush Lloyd; told the two women in the office that they wished to register; the women said they had orders not to register negroes, and they would have to see Mr. Cox.
18014	1957 Refused Woman	He went to the registration office but was told by a woman clerk that Cox was out and that he could not register under him. When he asked her when Cox would be in she said that she did not know.
18015	1957 Refused Woman	He attempted to register accompanied by Rush Lloyd and W. D. Ridgeway in 1957. They were met by a female clerk in the registration office who informed them that Cox was not there and that they would have to see him to register.
18093	1957 (Approx.) Refused Woman	Rev. Nobles attempted to register in 1957. He went to the registration office accompanied by Rev. W. T. Ridgeway, Rev. C. Fairley, Rev. Johnie Barnes, Rev. G. W. Williams and one or two other ministers. They arrived at the office at about 11 o'clock. A young woman clerk told them that they would have to see Mr. Cox who was not in at the moment. So they all left.

18014	1957–1958 Refused Woman	Mr. Bourn went with a group which included Rev. John Barnes, Rush Lloyd; Vernon Dahmer and perhaps B. F. Bourn, to the registration office to attempt to register. They were told by a woman at the office that Cox was not in and that they could register only under him.

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18077	1957 or 1958 Refused Cox–R	He asked a lady in the registrar's office if he could register. She told him the registrar was out. He asked when he would be in. She said he had no special time to come in.
18118	Spring, 1958 Refused Cox–R	Having moved to Hattiesburg from Lauderdale County, where he was a registered voter, Rev. Taylor went to the office of the Circuit Clerk to register; Cox at first told him he did not meet the residence requirements, as he had not lived in Forrest County for a year; Taylor reminded Cox that the residence requirement for ministers was only six months, but Cox still refused to register him until some things had been settled.
18091	April or May 1958 Refused Cox–R	In April or May of 1958, Mr. Mosley went alone to the registrar's office to attempt to register to vote in Forrest Co. He met Mr. Cox in the office. He told Cox that he wished to register. Cox asked him his name, address and length of residence. Then Cox said there was a lot of red tape involved in registering and Cox said he didn't have the time to let him try now. Then Cox said that he thought that they were going to change it so he wouldn't have to go through it all and told Mr. Mosley to do come back later.

18091	June or July 1958 Refused Cox–R	After being sent away in April or May 1958 and told to come back, Mr. Mosley made about three more attempts two months later. Each time a female clerk told him that Cox was not there and wouldn't be back that day.
18049	About 1958 Refused Cox–R	He went to the Registrar's office and told Mr. Cox he wanted to register. Mr. Cox said he could not register.
18046	1958 Refused Clerk	Woman clerk told him that Cox was out that in order to register he would have to come back and see him.
[fol. 1753]		
18118	Fall,1958 Refused Cox–R	Went to the office of the Circuit Clerk along with Rev. W. H. Hall, intending to register; Cox asked how long he had lived in Forrest County and whether he had voted before; Taylorgave him his length of residence and told him he had voted in Lauderdale County; Cox then asked if he had his poll tax receipts, which he did not have with him at the time; as Hall and Taylor were leaving the office, Cox said they were not supposed to come to register in groups, but one at a time. Both Hall and Taylor returned with Taylor's poll tax receipts, which Cox examined for 10 of 15 minutes; Cox then asked if Taylor was a member of the NAACP; Taylor replied that he was; Cox then asked if he knew that the NAACP was a Communist organization; Taylor said it had not been declared such by the Department of Justice; Cox then told Taylor he could not register, after which Taylor left.

18015	1958 Refused Cox–R	He went to the registration office accompanied by Rev. Ridgeway. They met Cox in the registration office. They asked him if they could register. He told them No, he was not registering you all. When they asked him why he just answered that he just wasn't going to. So they left the office.
18130	1958 Refused Cox–R	He told Mr. Cox he wanted to register. Mr. Cox asked him his name, how long he had been living in Hattiesburg, where he worked, how far he went in school, and if he paid poll taxes. He answered the questions and showed him his poll tax receipts. After Mr. Cox looked at them he told him to come back later.
18130	1958 Refused Cox–R	A few weeks after his last attempt he returned to register and told Mr. Cox he had come back as he had been told. Mr. Cox told him he could not register him.

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18008	1959 Refused Lynd–R	Went to the office of the Circuit Clerk to register, accompanied by Vernon Dahmer; Lynd told them he could not register them, as he was not yet set up in his office to do so.
18070	1959 Refused Lynd–R	Lynd said he could not register him as he had not been in office long enough to become familiar with the office.
18076	1959 Refused Lynd–R	Went to the office of the Circuit Clerk to register, but Mr. Lynd said he had just gotten in office and did not understand about the registration.

18118	Refused Woman	He went to register at Mr. Lynd's office. The lady clerk told him the office was not set up for registration.
18037	March 1959 Refused Lynd–R	He was accompanied by Mrs. Pearlina Barnes. He asked a lady who works in Mr. Lynd's office if they could register and she said they would have to see Mr. Lynd. About that time Mr. Lynd came in and they asked him if they could register. He said he hadn't been in office very long and was not set up yet for registering people and he did not know when he would be ready to register people.
18013	3/3/59 Refused Woman	He told a white woman clerk in the Registrar's office he wanted to register for voting and she said she could not register him, he would have to see Mr. Lynd.
18099	June 1959 Refused Woman	When Rev. Ray attempted to register in June 1959, he was told by a woman clerk that he would have to come back because Lynd was not in the office at the time.
18013	Aug. 1959 Refused Woman	He went to Mr. Lynd's office to register to vote. Mr. Lynd was not in his office so he asked the woman deputy if he could register. She told him he would have to see Mr. Lynd. He asked if Mr. Lynd was in the courthouse and she said he was not.

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18022	Fall 1959 Refused Lynd–R	She told Mr. Lynd she wanted to register. He told her to come back.
18104	Summer 1959 Refused Man	Rev. McAllister went to try to register accompanied by Rev. Nobles. They spoke to a middle aged man at the counter in the registration office. The man said the books are closed. They then left the office.

18075	March 1959 or 1960 Refused Woman	Went to the office of the Registrar; lady said Lynd was out and she could not register him.
18118	1959 Refused Woman	Lady clerk told him he would have to see Mr. Lynd to register.
18013	January 1960 Refused Woman	Mr. Lynd was not in his office. The woman clerk told him he would have to see Mr. Lynd, that she could not register him.
18014	1-27-60 Refused Woman	Lady in the office of the Circuit Clerk said he would have to see Mr. Lynd to register.
18056	1/27-60 Refused Woman	Went with R. R. Lloyd to the office of the Circuit Clerk where a lady said they would have to wait for Lynd, which they did for one-half hour, then left.
18021	Fall,1960 Refused Woman	Went to the office of the Circuit Clerk, Thereon Lynd, to register; lady in the office said that Lynd was out and she would have to come back; she would have to wait, and the lady said she would have to wait in the hall, which she did for about 10 minutes, then left.
18055	Fall of 1960 Refused Woman	Rev. Holliman went to the registration office accompanied by Rev. J. M. Barnes. When they went into the office they were met by a woman clerk. They told her they wanted to register. She said that since Mr. Lynd was not there they couldn't register.

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18073	Fall 1960 Refused White lady behind counter	Robert Lewis, accompanied by David Roberson and Jesse Stegall, all Negro school teachers, went to the registrar's office. A white lady behind the counter was giving forms to a white lady who wanted to send a registration form to someone in the Armed Services. They then asked the lady behind the counter if they could register and she said Mr. Lynd was not in and they would have to come back when Lynd was in since no one but Lynd could register them.
18112	Fall 1960 Refused White lady behind counter	Jesse Stegall, accompanied by David Roberson and Robert Lewis; all Negro school teachers, was told, at about 4:15 P.M., by a lady behind the counter in the Registrar's office that they would have to see Mr. Lynd to register and he was out. Stegall saw a white lady receiving a white form. They returned at about 10 minutes to 5 P.M. on the same day and a lady behind the counter in the registrar's office told them Mr. Lynd had not returned.
18101	Oct. 1960 Refused White lady behind counter	David Roberson, accompanied by Jesse Stegall and Robert Lewis, all Negro school teachers went to the Registrar's office. A white lady behind the counter said Mr. Lynd was not in but might be in later that day. They returned later the same day and the same lady said Mr. Lynd was not in and he was the only one who could register them.

18112	Nov. 1960 Refused Lynd–R	Jesse Stegall accompanied by David Roberson, both Negro school teachers went to the Registrar's office at about 4:10P.M. and talked to Mr. Lynd. They told him they wanted to register and he said he could not register them, he did not have the time, and did not know when he would have the time.
18014	1/19/61 Refused Woman	Lady in the office of the Circuit Clerk said he would have to see Mr. Lynd.
18013	Jan.1961 Refused Woman	Woman clerk told him she could not register him that he would have to see Mr. Lynd. Mr. Lynd was not there.

[fol. 1757]

18061	1–31–61 Refused Lynd–R	Dewey Johnson, Myles Jones, Sam Hall, T. F. Williams, D. D. Stewart, A. C. Cooper, Cornell McRee and Sherman Jackson all tried to register the same day. They got to the office about 4 P.M. Mr. Lynd took one at a time. Only Myles Jones got to go in that day.
18049	1–31–61 Refused Lynd–R	At about 4:15 P.M. Sam Hall, Sherman Jackson, Myles Jones, Cornell McRee and other Negroes went to register to vote, Mr. Lynd asked each how long he had lived in Hattiesburg and then he told Myles Jones to come in and told the rest to wait in the hall. When Myles Jones finally came out they left. Also in the group were Willie Simpson, T. F. Williams, Willie Thigpen, A. C. Cooper, Dewey Johnson, Kenneth Beard, and Johnie Watts, all Negroes.

18058	1–31–61 Refused Lynd–R	A group of about 8 Negroes went to register to vote. Lynd asked him where he worked and how long he had lived in Hattiesburg and then told the group to wait in the hall. One Negro, Myles Jones, went into the office. They did not get to register so they all went home.
18080	Jan. 1961 Refused Lynd–R	Mr. McRee attempted to register for the first time in January of 1961. He was accompanied by about 8 or 10 men who work at the Hercules Powder Co.: A. C. Cooper, Willie Simpson, T. F. Williams, Dewey Johnson, Willie Thigpen, O. D. Stewart, Johnie Watts, Kenneth Beard, Sam Hall, Myles Jones, Sherman Jackson, and perhaps some others. They talked to Mr. Lynd and each told him his name, age and length of residence in Hattiesburg. Then Lynd told them he could take only one at a time. Myles Jones went first and the others waited in the hall. They arrived at the office at about 4 o'clock and waited in the hall for Jones to come out until about 5 o'clock. Jones finally came out but no one else was called in. Finally the janitor came around turning off the lights, so they left. About two

[fol. 1758]

18080 (Con.)	Jan. 1961	or three days later, McRee returned to the office this time accompanied by T. F. Williams, Lynd was there but a woman waited on them. She told them she could not take more than one at a time and took Williams into the office. McRee went to the hall and waited from about 4 to 5 o'clock closing time and then left.

18115	1–31–61 Refused Lynd–R	Mr. Stewart went with the group of 8 or 10 from the Hercules Powder Plant. They was told to wait in the hall while Lynd took one at a time and Jones went first. He waited with the others in the hall until after 5:00 when the office closed and they all went home.
18119	1–31–61 Refused & rejected Lynd–R	Willie Thigpen went to register with Myles Jones, Dewey Johnson, Sam Hall, Sherman Jackson, Willie Simpson, T. F. Williams, A. C. Cooper, Kenneth Beard and Johnie Watts. They got to the office about 4 P.M. Mr. Lynd took one at a time. Only Myles Jones got to go in that day, filled out a form and was rejected.
18124	1–31–61 Refused Lynd–R Woman	Went to the office of the Circuit Clerk to register with a group of other Negroes including Myles Jones, Sam Hall, Willie Thigpen, Dewey Johnson, Kenneth Beard, T. F. Williams, A. C. Cooper, and Willie Simpson; Myles Jones took the test, but by the time he had finished they said they did not have the time to take the rest of the group. Returned the following day about 10:00 a.m.; lady in the office said they were too busy, and asked him to come back later. Returned the next day and again the lady said they were too busy, asking him to return on a later day.

18034	1–31–61 Refused Lynd–R Woman	Mr. Cooper attempted to register with a large group of men from the Hercules Powder Plant. They arrived at the office at about 5 or 10 minutes to 4:00. When Cooper arrived the registrar had already started to take the group one at a time and Myles Jones was inside. Jones was the only one of the group permitted to go in and attempt to register; the rest including Cooper waited in the hall until they were told to go home at closing time. Later in the same week, Cooper returned to the office and asked if he could register and one of the women clerks did not permit him to do so. The next week Mr. Cooper tried again (on a different day of the week) again was not permitted to apply.
[fol. 1759] 18034 (Con.)	1–31–61	
18011	1–31–61 Refused Lynd–R	Went to the office of the Circuit Clerk with Myles Jones, O. D. Stewart, Willie Thigpen, T. F. Williams, and Sam Hall; arrived there about 4:00 p.m., after having paid poll tax; people in the office said they had time for only one applicant; Myles Jones went in, the rest waited in the hall; at 5:00p.m., the courthouse closed, and they had to leave. Returned to the office two days later with six others, again at approximately 4:00 p.m.; T. F. Williams went in and took the test; at 5:00 p.m. the courthouse closed, and they had to leave.

18005	February or March 1961 Refused Lynd–R	Mr. Barnes attempted to register in February or March 1961. He went to the registration office alone and met Mr. Lynd. Lynd asked him what he wanted and Barnes told him he wanted to register. Lynd asked how much education he had and Barnes replied 10th grade. Then Lynd told him that he didn't have enough education and therefore couldn't register.
18099	About March 1961 Refused Woman	Went to the registrar's office and was told by a female clerk that he could not register because Lynd was not there and only Lynd could register him.

[fol. 1760]

18073	9–28–61 Refused Lynd–R	Robert Lewis, Jesse Stegall and David Roberson, all Negro teachers, went to the Registrar's office at about 4:10P.M. and told a white lady behind the counter they wanted to register. She called Mr. Lynd and he asked who they were and where they worked and how long they had lived in the county and then said he did not leave enough time before closing to register but one of them. They decided to wait till the next day.
18112.	9–28–61 Refused Lynd–R	Jesse Stegall, accompanied by David Roberson and Robert Lewis, all Negro teachers went to the Registrar's office at about 4:10 P.M. Mr. Lynd told them they could not all register at the same time but must do so separately. He also said if they did not finish the form by 5 P.M. they would have to start over. As it was late in the day they decided to return another day.

18080	9–29–61 Refused Lynd–R	Mr. McRee attempted to register for the third time on September 29, 1961, when he went alone to the registration office arriving at about five minutes to 4. Mr. Lynd and Mr. Stegall, a Negro teacher were there. Mr. Stegall was taking his test. Lynd asked what he could do for him and McRee replied that he wanted to register. Lynd asked how long he had been living in the city and where he lived. Then Lynd told him that he had one fellow there he was giving the test to. He also said there were 5 other fellows coming to take the test that afternoon. Then Lynd told McRee that he couldn't take him that evening and the next day he wouldn't have any help. So he said to McRee, "You come back Monday or any day next week and I will give you the test."

[fol. 1761]

18142	10–2–61 Refused Woman	Went to register with David Roberson. The lady clerk said Mr. Lynd was out and he was the one to see about registering.
18130	10–2–61 Refused Woman	The lady told him Mr. Lynd was in court at the time.

[fol. 1762] B

The following Negro citizens of Forrest County were not registered to vote because they did not interpret the constitution to the satisfaction of the registrar. All events described below occured in the Circuit Clerk's office in Hattiesburg.

18039	June 1958 Rejected Cox–R	Mr. Davis attempted to register in the summer of 1958 and was accompanied on this attempt by Thomas Hall. They met Cox in the registration office and told him that they wanted to register. Cox asked them where they lived. Then Cox asked Davis the meaning of a section of the constitution. Davis told him that he didn't know. Cox replied, "You are not qualified to register unless you know some of the constitution. So they left.
18039	April (Appr) 1958 Rejected Cox–R	Mr. Davis attempted to register in about April 1958 and was accompanied to the office by I. C. Peay and Jonnie Hand (dead). They met Mr. Cox and told him that they wanted to register. Cox asked them if they could repeat a section of the constitution. Rev. Peay replied that he didn't know and asked what it contained. Cox then asked what a section of the constitution meant. Peay couldn't answer so Cox told them, "You are not eligible to register if you don't know the constitution. You need to go back and study if you don't know the constitution." So they left.
18065	1–1–61 Rejected Lynd–R	Rev. Jones attempted to register to vote in Jan. 1961. He was accompanied by a large group of men from the Hercules Powder Co. Lynd asked all the members of the group for their names, etc. Then he said that he could take only one at a time and so Rev. Jones went with him into an inner office. Jones was given an application and a card with a section of the constitution on it. After a

[fol. 1763]

time a woman came in and waited until he had finished. He gave her the form and left. The woman walked out into the hall and told the others that they couldn't take anyone else that day because it was closing time. He was rejected.

18119 2-1-61 Rejected Woman

A woman gave him a form and Section 121 to interpret. The section was so long he needed an extra piece of paper to copy it, and the woman gave him the paper. He filled out the form and he returned the next Monday to see if he passed. Mr. Lynd told him he did not qualify.

18091 2-3-61 Rejected Woman

He went to register late in the afternoon. The lady clerk gave him a form and Section 211 to interpret. The section was so long he needed an extra piece of paper to copy it. By then it was near closing time so she told him he would have to return after six months and fill out a form. He did not get to complete the form by the time she closed for the day-thus, Q19 is blank and Q21 is blank, though he copied the section in Q18 and on the extra piece of paper.

18069 9-28-61 Rejected Lynd-R

Mr. Kelly went to the registration just before noon and saw Mr. Lynd. He got a form and Section 112 of the constitution to fill out and interpret. He was not finished when the office closed at noon, but he came back in the afternoon and finished the form. He signed the form and gave it to Lynd. Lynd told him that he would have to come back in 2 or 3 days to see whether he had passed. He was rejected.

18119	5–59–62 Rejected Lynd–R	He filled out the form and was rejected because he re-copied Section 160 as his interpretation of Section 160.
[fol. 1764]		B
18052	April 1962 Rejected Lynd–R	Mr. Henry went to the registration office with Bennie Hines, Rev. J. W. Brown, and Betty Jean Steppes. The four of them went in and met Mr. Lynd. They told him that they wanted to register. He took them one at a time and asked them each his name, address, length of residence and finally occupation. Henry, Brown, and Hines answered that they were school bus drivers. Then Lynd announced that he could take only two at a time and so Henry and Miss Steppes went first. When he finished the form, Mr. Henry gave it to Lynd. Lynd looked at it and then said that it was unsatisfactory and that he couldn't accept it.
18121	5–7–62 Rejected Woman and Lynd–R	She went to register with Annie Pool. The lady clerk said Mr. Lynd was in court. They waited 30 or 45 minutes, and then Mr. Lynd gave her a form and Section 124 to interpret, and then told her she did not pass. She was rejected because of her interpretation.
18141	6–21–62 Rejected Lynd–R	She went to register with Gloria Bivins. She filled out a form and interpreted Section 224. Mr. Lynd told her it would be 30 days before the result because of publication. She returned in August and found out her form was unsatisfactory. She was rejected because her interpretation was not satisfactory to Mr. Lynd.

18021	9–28–61 Rejected Lynd–R	Went to the office of the Circuit Clerk to register; she was permitted to complete an application form and required to write and interpret a section of the constitution, however, she was not informed at that time of the results. On October 3, 1961, she called Mr. Lynd who told her she had not passed but refused to state the reason for her failure.
[fol. 1765] 18031	9–28–61 Rejected Lynd–R	He was accompanied by Rev. Wayne K. Pittman. Mr. Lynd gave him a form and Section 273 to interpret. He filled out the form and Mr. Lynd told them to come back in a few days to learn the results. He returned on October 2, 1961, and a white lady in Mr. Lynd's office said he was in court and she had no idea when he would be in his office. He returned on October 3, 1961, and the same lady told him Mr. Lynd was in court again. He returned on October 5, 1961 with Rev. Pittman and found Mr. Lynd in his office. Lynd told them they had failed and refused to tell them why they failed. He told them they could not reapply for 6 months.

[fol. 1766] C

The following Negro citizens of Forrest County were not registered to vote because of errors or omissions on their application forms. All events described below occurred in the Circuit Clerk's office in Hattiesburg:

18106	Feb. 1, 1961 Rejected Lynd–R.	Mr. Simpson went to the registration office and attempted to register. He was waited on by Mr. Lynd and was given an application form and a section of the constitution to interpret. The section was 112. When he finished the form he gave it to Lynd. When he returned several days later to find out the results, Lynd told him that he had failed to pass the application which he had filled out. He left the election district blank and signed both oaths but left the final line blank.
18130	Feb. 2, 1961 Rejected Lynd–R	He received a form and Sec. 178 to interpret. When he had just about finished filling out the form he took out his pocket dictionary to look up some words. The woman clerk saw this and called Mr. Lynd over. Mr. Lynd told him he was disqualified. He said he did not know he could not use anything to fill out the form and asked if he could fill out another form. Mr. Lynd said he could not. He asked when he could reapply and Mr. Lynd said six months. He left the election district blank.
18061	Feb. 4, 1961 Rejected Lynd–R	He went to register. Mr. Lynd told him to wait by the door until Sam Hall finished. He waited about 30 minutes and then got a form and Sec. 273 to interpret from a lady clerk. He returned the form to the lady clerk and then left. He was rejected. He signed both the oaths.

[fol. 1767]

18049	Feb. 4, 1961 Rejected Woman	He went to register on Saturday Feb. 4, 1961.. When he got there Sherman Jackson was filling out a form. The white lady in the office told him to wait outside in the hall. When Sherman Jackson came out, he went in and the lady told him to go back out in the hall until she was ready for him. A few minutes later she called him in, gave him a form and Sec. 165 to interpret. He did not fill out the oaths on the form but asked the lady about them. She said she could not tell him how to fill out the oaths. He was rejected. He left the oath blank and did not sign the final line.
18058	Feb. 4, 1961 Rejected Lynd–R	Mr. Lynd gave him a form and Sec. 112 to interpret. He filled out the form but was not registered that day. He heard from another Negro, Willie Thigpen, that they had not passed so he did not return to ask Lynd if he had passed. He wrote "34" as his election district and "Library" as his County in the oath: He did not sign the final line. He did not say where his business was carried on in answer to Q. 5 because he did not have any business.
18101	Mar. 2 1961 Rejected Lynd–R.	He was given a form by Mr Lynd and Sec. 273 to interpret. He filled out the form and Mr. Lynd told him to return in a few days to find out the results. He returned and Mr. Lynd told him he did not pass and told him he did not have to tell him why he did not pass. He left the oath blank and did not sign the final line.

18022	Apr. 8, 1961 Rejected Woman and Lynd–R	Woman clerk gave Mrs. Burger an application form on April 8, 1961, and Sec. 211 to interpret. She completed the form and the clerk told her she would have to come back to see Mr. Lynd to see if she passed. Mrs. Burger went back the next Tuesday and asked the woman clerk if she had passed. She said Mr. Lynd had seen her form but she did not know the results. Mr. Lynd was not in so Mrs. Burger came back a few days later and Mr. Lynd told her she had not qualified and would not tell her why she had failed. Mrs. Burger did not sign the final line on the application.
[fol. 1768]		
18098	Sept. 26, 1961 Rejected Theron C. Lynd	He was accompanied by Rev. James C. Chandler. Mr. Lynd gave him a form and Sec. 165 to interpret. He turned the form in to Lynd and Lynd told him to come back in a few days to find out if he passed. He returned a few days later but Lynd was not in his office. He returned on Oct. 6, 1961, accompanied by Rev. Chandler. Mr. Lynd told him he did not qualify. He asked where he had failed on the form and asked if he could correct those questions but Lynd just said he had failed. Rev. Chandler asked when they could try again and Lynd said in 6 months. He filled out both oaths on the form and signed the final line. He put 4th as his election district.

18112	Sept. 29, 1961 Rejected Lynd–R	Jesse Stegall, accompanied by David Roberson and Robert Lewis, went to the Registrar's office at about 3:35 P.M. Mr. Lynd took them one at a time. Jesse Stegall was given a form and Sec. 178. He completed the form and asked Mr. Lynd when he would know if he was qualified and Lynd said in a few days. Stegall returned with Lewis on Oct. 6, 1961, and Lynd told him he did not qualify, would not tell him what part of the form was failed, and told him he could not reapply for six months. He did not sign the final line on the application he filled.

[fol. 1769]

18073	Sep. 29, 1961 Rejected Lynd–R	Robert Lewis, Jesse Stegall and David Roberson went to register and Lynd said he could take only one at a time. Stegall went first and Lewis and Roberson waited. Then Lewis went in and filled out a form and interpreted Sec. 121. Lynd told him he could come back in a week to see if he passed. Lewis and Stegall returned the next week and Lynd told them they had failed and he refused to tell them what phase of the form they failed. Lynd told them they could not reapply for 6 months. Lewis did not list his election district or county in the oath and he did not sign the final line on the form.
18022	Oct. 9, 1961 Rejected Lynd–R	Mr. Lynd said she had been up to register not so long ago and she said it had been six months ago. He then gave her a form and Sec. 124 to interpret and when she completed the form he told her she would have to return to find out the results as he

		was busy. She returned several days later and Lynd told her she had not qualified. She did not sign the final line on the application.
18101	Oct. 12, 1961 Rejected Lynd–R	He was given a form by Mr. Lynd and Sec. 140 to interpret. He filled out the form. When he returned to see if he passed Mr. Lynd told him he did not and when he asked him what he did wrong Mr. Lynd did not reply but walked away. He did not sign the final line on his application.
18142	Oct. 12, 1961 Rejected Lynd–R	He went to register with David Roberson. He received a form and two cards on which was typed Sec. 273. He filled out the form and interpreted the Section and then Mr. Lynd told them they could come back tomorrow for the results. He returned on Oct. 16, 1961 and Mr. Lynd told him he did not pass and did not tell him why. He left the final line blank.

[fol. 1770]

18105	Oct. 17, 1961 Rejected Woman and Lynd–R	She went to register with another teacher, Eloise Hepson. The lady clerk gave them forms. She got a form and Sec. 100 to interpret. When she finished the lady said she could find out the results in 3 or 4 days. She returned and Mr. Lynd said she failed. She made an error in filling in the election district and left the final line blank.

18054	Oct. 17, 1961 Rejected Woman and Lynd–R	She was given a form by a white lady in the registrar's office and Sec. 233 to interpret. After she completed the form the lady said she would have to return in three or four days to find out if she had passed. She returned at a later date and Mr. Lynd told her she had not passed. She omitted her election district and did not sign the final line on the form.
18136	Apr. 9, 1962 Rejected Lynd–R	She went to register with Annie Mae James, Rev. L. P. Ponder, and Earline Boyd. Mr. Lynd took them 2 at a time. She filled out a form and interpreted Sec. 89. Mr. Lynd said it was not satisfactory. She was rejected because she gave "Palmers Crossing" as her election district and left the final line blank.

[fol. 1771] D

The following Negro citizens of Forrest County were not permitted to register to vote after Theron C. Lynd was enjoined from discriminating against Negroes by the United States Court of Appeals for the Fifth Circuit. They were not told why they were rejected but their forms indicate errors or omissions which Theron C. Lynd used as a basis for rejecting Negroes. These events occurred at Theron C. Lynd's office.

18073	April 18, 1962 Rejected Lynd–R	Robert Lewis went to register with David Roberson. Mr. Lynd gave him a form and Sec. 160 to interpret. When he finished Mr. Lynd told him he did not pass and refused to tell him why he did not pass. He gave unconsistent answers for his length of residence on this form and a form he filled out in Sept 1961.

18101	April 18, 1962 Rejected Lynd–R	He went to register with Robert Lewis at about 4:30 P.M. Mr. Lynd was there and gave him a form and Sec. 100 to interpret. When he finished Mr. Lynd told him he did not make it. He asked him what part he fell short on but Mr. Lynd said he could not tell him. He left the election district and final line blank.
18136	April 23, 1962 Rejected Lynd–R	Mr. Lynd questioned her about how long she had lived in Forrest County, her occupation and if she was employed by anyone. She is self-employed. Then he gave her a form and Sec. 258 to interpret. He rejected her but refused to tell her why. She put "6th" as her election district and left the final line blank.
18031	April 23, 1962 Rejected Lynd–R	He went to register with Rev. Wayne Pittman at about 9:30 A.M. Mr. Lynd said he had to be in court and told them to come back at about 11:30. They returned about 11:40 and Mr. Lynd said it was almost dinner time and told them to come back after 1:30. They returned at 1:40. Mr. Lynd gave Rev. Chandler a form and Sec. 206 to interpret. After he completed the form Mr. Lynd looked it over and said that their election districts were not numbered, and asked him where he would vote. Rev. Chandler said Library, and then changed his number to Library.

[fol. 1772]

18031 (Con't)		Mr. Lynd then looked at the form again and wrote his name in the registration book, but then he said he found just one little error, though he had thought the form was perfect. Rev. Chandler asked for the form back and changed his name on the form from James C. Chandler to James Cleveland Chandler, but Mr. Lynd said that was not the error and when Rev. Chandler again asked for the form Mr. Lynd said no and refused to tell him what the error was. Then he crossed his name out of the registration book. On his form, Rev. Chandler answered Q. 3 by giving only his year of birth and did not also give his age.
18011	April 24, 1962 Rejected Lynd–R	He went to register at about 11 A.M. He asked two white ladies in the register's office if Mr. Lynd was in. They said he was ouf and would probably be back at 1 P.M. He waited and finally saw Mr. Lynd and got a form and Sec. 112 to interpret. Lynd told him he did not pass, but did not tell him why. Lynd rejected him because he put "Kellysettlement" as his place of residence, and because he signed both oaths and the final line.
18058	April 28, 1962 Rejected Lynd–R	He went to register with T. F. Williams. He filled out a form and interpreted Sec. 112. Mr. Lynd said he did not satisfy him but did not say why. He put "Hattiesburg" as his election district and left the final line blank.
18119	April 28, 1963 Rejected Lynd–R	He filled out a form, interpreted Sec. 226 and was rejected because he did not sign the final line.

18119	May 3, 1962 Rejected Lynd–R	He filled out a form, interpreted Sec. 224 and was rejected because he did not sign the final line.
18105	May 3, 1962 Rejected Lynd–R	She went to register with Eloise Hopson and Addie Burger. They filled out forms. She interpreted Sec. 17. Mr. Lynd told her she did not pass. She left the election district and the final line blank.

[fol. 1773]

18105	May 4, 1962 Rejected Lynd–R	Mattie Chambers was there. She filled out a form and interpreted Sec. 160. Mr. Lynd said she did not pass. She wrote "Hattiesburg" as her election district and left the final line blank.
18119	May 4, 1962 Rejected Lynd–R	He filled out a form, interpreted Sec. 273 and was rejected because he did not sign the final line.
18031	May 11, 1962 Rejected Lynd–R	Alphonso Clark went to register to vote. Mr. Lynd asked his name, age, education, address, what grade he taught and then gave him a form and Sec. 124 to interpret. Mr. Lynd rejected him but did not tell him why. He did not sign the final line on the form.
18137	May 11, 1962 Rejected Woman	He went to register about 10:30 A.M. Mr. Lynd was in court and the lady clerk said he would have to come back later when Lynd was in. He returned at 1:30 P.M. with Thomas Davis. He filled out a form and interpreted Sec. 17. Mr. Lynd said he did not make it and could not tell him why. He put "Hattiesburg" as his election district and left the final line blank.

18101	May 11, 1962 Rejected Lynd–R	Mr. Lynd gave him a form and Sec. 258 to interpret. When he finished Mr. Lynd said he did not make it but did not tell him why.
18058	May 12, 1962 Rejected Lynd–R	He went to register with T. F. Williams and Dewey Johnson. He filled out a form and interpreted Sec. 160. Mr. Lynd said he did not qualify but did not say why. He left his election district and county blank and did not sign the final line.
18119	May 12, 1962 Rejected Lynd–R	He filled out a form and was rejected because he signed all the lines on page 3 and re-copied Section 13 as his interpretation of Section 13.

[fol. 1774]

18077	May 23, 1962 Rejected Lynd–R	He went with his wife. He received a form of Sec. 160 to interpret. He filled out the form. Mr. Lynd then told him it was not satisfactory but did not tell him why. He was rejected because he did not sign the final line.
18139	May 23 1962 Rejected Lynd–R	She went with her husband Clarence Magee to register. She received a form and Sec. 224. to interpret. She filled out the form but did not take the oath part because she thought it was to be given orally. When she finished Mr. Lynd told her her form was unsatisfactory. She asked why and he said he was not allowed to tell what was wrong with the form. She was rejected because she did not fill out the oath and sign the final line of the form.

18139	May 24, 1962 Rejected Lynd–R	She went with her husband to register. She received a form and Sec. 10 to interpret. She filled out the form and put "Walthall" as her election district because she looked on the sheriffs list of poll tax payers required by law to be published on the bulletin board at the court house and found her name listed in the Walthall district. Mr. Lynd rejected her because he discovered, by questioning her husband, that their house was in the Easton district. He did not tell her or her husband that he had discovered this and he did not tell them why he was rejecting them.
18077	May 24, 1962 Rejected Lynd–R	He went with his wife to register. He received a form and Sec. 17 to interpret. He filled out the form and put "Walthall" as his election district because he had looked on the sheriff's list of poll tax payers and found his name listed in the Walthall district. Lynd questioned him on the exact location of his house and when he discovered that Clarence Magee actually lived across the line in the "Easton" district and not the "Walthall" destrict, he rejected him. Lynd did not tell him why he was rejecting him.

[fol. 1775]

18077	May 28 1963 Rejected Lynd–R	Mr. Lynd gave him a form and Sec. 224 to interpret and then rejected him because he put "Walthall" as his election district. Mr. Lynd knew he actually lived in "Eaton" but did not tell him this or why he was rejected.

18077	May 29, 1963 Rejected Lynd–R	Mr. Lynd gave him a form and Sec. 125 to interpret and then rejected him because he put "Walthall" as his election district. Mr. Lynd knew he actually lived in "Eaton" but did not tell him this or why he was rejecting him.
18134	May 29, 1962 Rejected Lynd–R	Mr. Lynd gave her a form and Sec. 17 to interpret and then told her she did not qualify but did not tell her why. Mr. Lynd rejected her because she left Q. 5 blank which asks where your business is carried on and left Q. 13 blank which asks by what name you wish to be called if there is more than one person of your same name in the precinct. She gave her occupation in answer to Q. 4 as cook and the name of her employer in answer to Q. 6 as "William Carey College."
18101	June 4, 1962 Rejected Lynd–R	Mr. Lynd gave him a form and Sec. 224 to interpret. When he finished the form Mr. Lynd said he could not act on the application due to the House Bill that had been passed, that he would have to publish his name in the paper, and that David Roberson could return on July 14, 1962 to get the results. On July 14, Roberson was in school at Cornell so he wrote Mr. Lynd a letter asking the results but received no reply. He was rejected because he put "Hattiesburg, Miss." as his place of residence in answer to Q. 9.
18077	June 6, 1962 Rejected Lynd–R	He went to register with his wife. Mr. Lynd gave him a form and Sec. 224 to interpret. When he finished Lynd told him he had to have his name published and would have to return later. His form was rejected because he put "Walthall" as his

election district. Lynd knew he actually lived in "Eaton" but did not tell him this.

[fol. 1776]

18139	June 6, 1962 Rejected Lynd-R	She went to register with her husband. She received a form and Sec. 160 to interpret. She filled out the form and put "Hattiesburg" as her election district because the form said if you live in a city with more than one election district you can put the name of the city. When she finished Mr. Lynd told her her name would be run in the paper and after it appeared the second time she could come back to get the results. Mr. Lynd rejected her for giving "Hattiesburg" as her election district.
18134	June 6, 1962 Rejected Lynd-R	She went to register with Annie Mae James, Willie Woods and Gladys Woods. Mr. Lynd gave her a form and Sec. 125 to interpret and then told her her name would have to appear in the paper twice before he could tell her if she qualified. He said to come back on July 8th. She went back on July 6th and he said the application was not ready. She went back July 25th and he said she failed. She left questions 5, 6, and 17 blank and Mr. Lynd marked her form "Not Satisfactory".
18133	June 6, 1962 Rejected Lynd-R	He told a lady in Mr. Lynd's office that he wanted to apply to register. She said to wait a few minutes, that Mr. Lynd was not there. When Mr. Lynd came in he got a form and Sec. 112 to interpret and then Mr. Lynd told him to come back on July 8. He returned July 9 and Lynd told him he did not make it. He left the final line blank.

18140	June 15, 1962 Rejected Lynd-R	He filled out a form and interpreted Sec. 273. He was told to come back because of publication. He was rejected because he put "3" as his election district. His form is marked "not complete".

[fol. 1777]

18136	June 15, 1962 Rejected Lynd-R	She filled out a form and interpreted Sec. 112. Mr. Lynd told her she should not come back before July 25 because he had to publish her name twice. She returned on July 30 and the lady clerk told her she failed but said she could not tell her why. She was rejected because she put "Hattiesburg" as her election district. She is in the Dixie Pine district outside the city levels of Hattiesburg.
18136	July 30, 1962 Rejected Woman	Lady clerk gave her a form and when she finished the lady clerk said she could check back in about 28 days. She was rejected because she put "Hattiesburg" as her election district. She tried to find out her election district by looking in old newspapers and in books and finally guessed she was with in Dixie Pine or Irene Chapel so the next time she put Dixie Pine. No one ever told her why she was being rejected or what her precinct was.

[fol. 1778] E

The following Negro citizens of Forrest County applied to register after Theron C. Lynd was enjoined from discriminating against Negroes. They were not permitted to register because Mr. Lynd was not in his office or they were required to wait in line before receiving an application form because Theron C. Lynd was only permitting two at a time to make applications. The events described below occurred at the Circuit Clerk's office in Forrest County.

18058	4/14/62 Refused Lynd-R	He went to register with Dewey Johnson and T. F. Williams. Mr. Lynd said he could only take two at a time so he left.
18101	4/16/62 Refused Woman	He went to Mr. Lynd's office with Jesse Stegall, Wayne Sutton, and Robert Lewis. All are Negro school teachers. The lady told them Mr. Lynd was handling all registration and he was not in and would not be in that afternoon.
18031	4/16/62 Refused Woman	He went to register with Sherman Jackson. The lady in Mr. Lynd's office said Mr. Lynd was not in. They waited a few minutes and left.
18142	4/16/62 Refused Woman	He went to Mr. Lynd's office with Robert Lewis, Jesse Stegall and David Robertson. All are Negro school teachers. The lady told them Mr. Lynd handles registration and he was not in.
18112	4/16/62 Refused Woman	Jesse Stegall went to register with Robert Lewis, Wayne Sutton and David Roberson, all Negro school teachers. The lady in the office said Mr. Lynd was registering everybody and he would not be back that afternoon.

[fol. 1779]

18073	4/16/62 Refused Woman	Lady clerk told Robert Lewis, Jesse Stegall, Wayne Sutton and David Roberson that Mr. Lynd was registering everybody and he was not in.
18073	4/17/62 Refused Woman	Robert Lewis went to register with David Roberson at about 11:15 a.m. The lady told them they would have to see Mr. Lynd. She said she could not give them the forms, that Mr. Lynd was handling all registration and that she did not know when he would be in his office.

18073	4/17/62 Refused Woman	Robert Lewis went to register at about 4:15 p.m. with Wayne Sutton, Jesse Stegal, and Erlexia Lewis. The lady said Mr. Lynd was handling all registration and she did not know when he would be in.
18112	4/17/62 Refused Woman	Jesse Stegall went to register with Robert Lewis, Erlexia Lewis, and Wayne Sutton about 4:00 p.m. The lady in the office said Mr. Lynd was registering everybody, that she could not give them the forms, that Mr. Lynd was not in and probably would not be back that afternoon.
18142	4/17/62 Refused Woman	He went to register with Robert Lewis, Erlexia Lewis and Jesse Stegall. The lady in the office said they would have to see Mr. Lynd to register and he was out.
18008	4/17/62 Refused Woman	Told by a woman clerk that only Lynd had the authority now to register people and that she would have to see him.

[fol. 1780]

18101	4/17/62 Refused Woman	He went to Mr. Lynd's office with Robert Lewis at about 11:00 a.m. The lady said Mr. Lynd was not in and he was handling all registration. They asked if she could give them the forms to fill out and she said she could not.
18119	4/21/62 Refused Woman	The lady in Mr. Lynd's office told him he would have to see Mr. Lynd, that she was not allowed to handle any registration and Mr. Lynd was out of town because of a death in his family.

18130	4/23/62 Refused Lynd-R	In the afternoon, T. F. Williams went to register with Sherman Jackson, Hough Smith, Kenneth Beard, and Sam Hall. When they got there there were two Negro women waiting and two Negro men filling out forms. When they started closing the courthouse for the day, Mr. Lynd came out and said he was going home.
18058	4/23/62 Refused Lynd-R	He went to register about 4:00 p.m. with Sam Hall, T. F. Williams, Hough Smith. Others were there. Mr. Lynd said to wait. He was taking two at a time. He waited until the office closed and he heard Mr. Lynd say he was going home.
18022	4/23/62 Refused Lynd-R	Mrs. Burger was accompanied by Eloise Hopson. They went to the office at about 4:05 on April 23. Lynd told them that he had two in the office filling out forms and two waiting and so asked them to come back later. They left but returned at 4:35 and waited in the hall. They were still waiting at 5:00 when the doors were locked and she heard Lynd say that he was finished for the day.

[fol. 1781]

18134	4/24/62 Refused Massengale- D.C.	Earline Boyd went to register with Annie Mae James at about 9:30 a.m. Mrs. Massengale said Mr. Lynd was downstairs in court so they decided to wait. Later the phone rang and Mr. Massengale said yes there are two niggers here waiting to register. She then asked their names and repeated them into the phone. She then asked were they up there yesterday and they said yes. She then said yes into the phone and then she told them Mr. Lynd said they would have to come back that afternoon.

18031	4/24/61 Refused Lynd-R	He returned to register with Rev. Wayne Pittman at about 9 a.m. Mr. Lynd said he had to go to court and to come back that afternoon.
18119	4/25/61 Refused	He went to Mr. Lynd's office about 10 a.m. and looked in the door but since he did not see Mr. Lynd, he left.
18031	4/25/61 Refused Woman	He went to register at about 9:30 a.m. The lady in Mr. Lynd's office said he was in court and would not be back until that afternoon. He returned at 4:15 p.m. that afternoon with Rev. Wayne Pittman. After Mr. Lynd talked to Rev. Pittman he told Rev. Chandler it was too late to start working on the form because the office closed at 5:00 p.m.
18121	April, 1962 Refused Woman	She asked the lady in Mr. Lynd's office if she could register. She said Mr. Lynd was not in but he would be in that afternoon.
[fol. 1782]		She went to register in the morning.
18121	Last week April, 1962 Refused Lynd-R	The lady clerk told her Mr. Lynd was not in, he would be back at 1:00 p.m. When she returned, J. A. Cohen and Annie Pool were inside registering. Annie Mae James, Willie Simpson, Kenneth Beard, Rev. L. P. Ponder, Betty Steppes and Rev. John Barnes were waiting outside to register. Mr. Lynd was only taking two at a time. She waited from 1:00 p.m. until about 3:30 p.m. and then left.
18059	May, 1962 Refused Woman	She tried to register twice in May but Mr. Lynd was in court both times.
18136	Early May, 1962 Refused Woman	The lady clerk told her Mr. Lynd was not in his office and only he could allow her to apply. She returned again in May and again Mr. Lynd was out.

18137	5/10/62 Refused Woman	The lady clerk told him Mr. Lynd would have to register him.
18077	5/22/62 Refused Woman	Clarence Magee went to register with his wife Carrie Magee. He told the lady clerk they wanted to see Mr. Lynd to register. She said Mr. Lynd was out.
18139	5/22/62 Refused Woman	Carrie Magee went to register with Clarence Magee. He told the lady clerk they wanted to see Mr. Lynd to register. She said Mr. Lynd was out.
[fol. 1783]		He has tried to register under both Cox and Lynd; on one occasion Cox told him that Negroes were not being registered; most of the times he was told that Lynd was not in the office and he should come back.
18020	Dates Unknown Refused Cox-R Lynd-R	
18094	Date Unknown Refused Cox-R	He went to the office of the Circuit Clerk in order to register; Mr. Cox told him to come back.

[fol. 1784] Forrest Co. #68

Delayed in Applying

18061	4-14-62 Rejected Lynd-R	Filled out a form and interpreted section 160 of the constitution. Gave the form to Lynd when he was finished but Lynd told him that it was unsatisfactory. Lynd refused to give the reason that the form was not satisfactory.

18130	4-14-62 Rejected Woman Lynd-R	T. F. Williams went to register with Dewey Johnson and Sherman Jackson. The lady said Mr. Lynd did the registering so they waited. In about 25 minutes Mr. Lynd came and said he could not take but 2 at a time so Sherman Jackson left. T. F. Williams got a form and Sec. 10 to interpret. When he finished Lynd said he failed.
18113	4-18-62 Rejected Lynd-R	Mrs. Stepps attempted to register in April of 1962 accompanied by Bennie Hines, John Henry, and Rev. Brown. When they went into the office they met Mr. Lynd. Lynd asked them all for their name, address, and occupation. After the others told Lynd that they worked for the county driving school buses, Mrs. Stepps told Lynd that she was self-employed. Lynd told them that he could take only two at a time. Mrs. Stepps and Mr. Henry went first and received the forms. When they had completed them, Lynd looked at them and told them that they were unsatisfactory and so they left the office.
18134	4-23-62 Rejected Massengale (Mrs.) of D.C. Lynd-R	She went to register with Annie Mae Jones. Mrs. Massengale told them they would have to see Mr. Lynd. Mr. Lynd came in and told them he was going to court and they would have to wait 30 or 45 minutes. About 30 minutes later Mr. Lynd came back, gave her a form and Sec. 224 to interpret. When she finished Mr. Lynd told her she did not qualify. She asked him what was wrong but he said he could not tell anybody what was wrong.

[fol. 1785]

18142 4-23-62
Rejected
Lynd-R

He went to register with Jesse Stegall. He received a form and Sec. 124 to interpret. Mr. Lynd took two at a time. Other Negroes had to wait —Sherman Jackson, Eloise Hobson, Arthur James, Jimmie James, Addie Burger and others. When he finished Mr. Lynd told him he did not qualify and could not tell him why. He did not give a correct election district and left the final line blank.

18140 4-24-62
Rejected
Lynd-R

He went with Mrs. Betty Jean Stepps to register to vote at about 11 A.M. There were three or four other Negroes waiting for Mr. Lynd to return from court. They waited till 1:30 P.M. when Mr. Lynd arrived. He said he could only take two at a time so Rev. Ponder waited about one more hour. Then he was given a form and Sec. 17 to interpret. Mr. Lynd then looked over his form and told him he did not qualify but did not tell him what was wrong.

18138 4-23-62
Rejected
Lynd-R

He went to register with his brother Jimmie James. Mr. Lynd told them to wait. Addie Burger was already waiting. Then he and his brother got in and got forms. Other Negroes were still waiting. He got Sec. 72 to interpret. Lynd said he failed. He left the election district and the final line blank.

He returned again in July, filled out a form, waited for publication, returned in August and found he failed and filled out another form.

18119	4-23-62 Rejected Lynd-R	He saw Mr. Lynd about 9 A.M. and told him he wanted to register. Mr. Lynd told him he was going to court and to come back about 10:30. He returned and Mr. Lynd gave him a form and Sec. 100. After he finished Mr. Lynd told him it was not satisfactory. He was rejected because he did not sign the final line.

[fol. 1786]

18112	4-23-62 Rejected Lynd-R	Jesse Stegall went to register with Wayne Sutton. Mr. Lynd asked them where they worked and then gave them forms. Jesse Stegall got Sec. 160 to interpret. While they were filling out their forms about 8 Negroes came to register and Mr. Lynd told them they would have to wait, he could only take two at a time. When Jesse Stegall finished Lynd told him he did not qualify, and said he could not tell him why he failed. Lynd rejected him because he put "Hattiesburg" as his election district.
18098	4-23-62 Rejected Lynd-R	He was accompanied by Rev. James Chandler. They tried to register twice in the morning of April 23, 1962. The first time Mr. Lynd was about to go to court and told them he did not have time. They returned at 11:30 and Mr. Lynd told them to come back after 1:00. They returned at 1:30. Mr. Lynd gave him a form and Sec. 135 to interpret. When he finished Mr. Lynd told him he failed, refused to tell him why, and would not let him have his form back to make corrections.
18059	4-23-62 Rejected Lynd-R	Annie Mae James went to register with Earline Boyd at about 9:45. The lady told them they would have to see

Mr. Lynd who then came in and told them he had to go to court and would be back in 30 or 45 minutes. He came back at 10:30 and gave her a form and Sec. 10 to interpret. After she finished he said it not satisfactory and when she asked what was wrong he said he could not tell her. She did not fill out the oath because she thought you would do that if you registered.

18135 4-24-62 Rejected Woman Lynd-R

He went to register at about 10:30. A lady clerk said he would have to see Mr. Lynd and he would not be back until 1:30 P.M. He returned at 1:30 with Annie Pool. Mr. Lynd asked his name, age, and where he worked. Mr. Lynd gave him a form and Sec. 89 and then told him he did not qualify and said he could not tell why. He was rejected because he did not fill out the oath or sign the final line. Mr. Lynd did not say anything to him about that.

[fol. 1787]

18059 4-24-62 Rejected Massengale (Mrs.) of D. C. Lynd-R

Annie Mae Jones went to register with Earline Boyd. Mrs. Massengale told them Mr. Lynd was not in and so they waited. Later Mrs. Massengale talked on the phone and then said Mr. Lynd said to come back at 1:30 P.M. Mrs. James returned at 1:30 and several Negroes were there, two of whom were filling out forms—Annie Pool and J. A. Cohen. Mr. Lynd told her she would have to wait for them to finish. Then he gave her a form and Sec. 233 to interpret at about 3:00 P.M. After she finished he told her it was not satisfactory, she asked why, and he said he could not tell.

18141	4-24-62 Rejected Woman Lynd-R	She was accompanied by J. A. Cohen. They were told by a lady in the Registrar's office that Mr. Lynd was the only one registering people and he was in court. They returned after lunch and saw Mr. Lynd. There were four or five other Negroes there. Mr. Lynd gave her a form and a Sec. 273 to interpret and then told her she failed but could not tell her why. She left the oath blank.
18049	5-12-62 Rejected Lynd-R	He went to register alone. When he got there he saw Sherman Jackson and Willie Thigpen filling out form. He was told to wait to one got finished. He waited and then Mr. Lynd gave him a form and Sec. 125 to interpr[illegible]d then told him he did not satisfy him.

[fol. 1788]

18037	5-17-62 Rejected Woman Lynd-R	Vernon Dahmer and Harold Dahmer went to register. They were told by a woman in Mr. Lynd's office that he was upstairs in court. They went upstairs but the court was empty. They came downstairs as Mr. Lynd was leaving his office and they asked to register to vote. They both filled out forms and Mr. Lynd said they failed and said he could not tell why. Clotee Ware and Rev. J. W. Brown came to register and Mr. Lynd said he had to go to court and they should come back.
18059	6-6-62 Rejected Lynd-R	She went to register with Earline Boyd, Gladys Woods, and Willie Woods. They all filled out forms at the same time. She interpreted Sec. 165 and was told to wait about 30 days to find the results. She returned

July 9 with Mr. & Mrs. Woods, and the lady clerk said Mr. Lynd was in court. They left their names and returned at about 11:00 a.m. and Mrs. Massengale telephoned and then said Mr. Lynd said you did not pass but could fill out forms anytime he was there. She was rejected because she left the final line blank.

18059 8-6-62 Rejected Lynd-R — She went to register with Earline Boyd, Gladys Woods and Willie Woods. They returned September 11 to see if they passed. All had failed. Mr. Lynd said they could fill out new forms but only two at a time. They left.

[fol. 1789] Forrest County #68

Part II

Application Forms

1. Number of Application Forms

The first form in Forrest County is dated November 18, 1960. A hearing on the Government's motion for a preliminary injunction in *U.S.* v. *Lynd* was held on March 5, 6, and 7, 1962. The Court of Appeals issued an injunction pending appeal which was served on Theron C. Lynd on April 18, 1962. On or before June 21, 1962, two months after a citation for contempt of court was issued against him, Theron C. Lynd stopped helping white persons fill out their forms. The forms by race during these periods are as follows:

a. November 18, 1960—March 5, 1962

	Accepted	Rejected
White	744	9
Negro	0	32

b. March 5, 1962—April 18, 1962

	Accepted	Rejected
White	30	1
Negro	0	6

c. April 18, 1962—June 21, 1962

	Accepted	Rejected
White	37	16
Negro	8	82

[fol. 1790]

d. June 22, 1962—August 10, 1962

	Accepted	Rejected
White	14	25
Negro	1	12

2. Period Which Forms Cover

On August 11, 1960, the United States made a demand for inspection of voting records on Theron C. Lynd. Theron Lynd refused to make these records available to the Special Agents of the Federal Bureau of Investigation and on August 23, 1960, he requested a 90-day extension. On August 26, 1960 he was granted until September 16, 1960, to respond. On September 15, 1960, Theron C. Lynd wrote declining to voluntarily furnish any records and again asked for an extension of time to make a final decision. On January 19, 1961 the Government filed a suit to compel inspection of his records.

The first form is dated November 18, 1960. There was testimony at the hearing in the district court on March 5, 6, and 7, 1962 that white persons were registered without filling out forms as late as November, 1960, and the United States Court of Appeals in the contempt case against Theron C. Lynd "adopted solely as a matter of historical fact as to prior practices" finding of fact 25.13 which states:

> [fol. 1791] From February 26, 1959 [the date Theron C. Lynd took office] through April 10, 1962, 1,836 white applicants were registered to vote in Forrest County without filling out application forms or interpreting a section of the Mississippi Constitution.

No Negroes were permitted to register during this period and Negroes were not permitted to fill out application forms until January 30, 1961. (See Part I.)

3. Analysis of Forms

a. Selection of Constitution Sections—

(1) November 18, 1960—March 5, 1962

Section	White	Negro
118	211	0
128	119	0
139	115	2
14	81	0
116	66	0
226	65	1
135	34	1
125	19	1
13	16	0
70	13	0
10	5	0
16	5	0
258	3	0
273	1	6
72	0	1
100	0	1
112	0	3
124	0	1
165	0	5
233	0	2
121	0	2
140	0	1
178	0	3
211	0	2
	753	32

[fol. 1792] As shown in preceding table:

69 percent or 519 of 753 white persons who completed forms during this period received 9 sections of the Constitution which were given to none of the 32 Negroes.

66 percent or 21 of the 32 Negroes who completed forms received 10 sections which were given to none of the 753 white persons.

(2) April 18, 1962—June 21, 1962

Section	White	Negro
10	4	5
13	0	1
17	11	13
24	11	2
72	0	1
89	0	2
100	0	2
107	0	1
112	0	6
118	5	0
124	0	5
125	3	6
135	3	3
139	4	0
160	0	13
165	1	3
206	2	1
224	0	12
226	6	1
233	0	1
243	1	0
258	0	3
272	2	1
273	0	6
	53	88

The Court of Appeals in *U. S.* v. *Lynd* (contempt case) with respect to this period found: (Finding No. 19.0)

> From April 18, 1962 through June 21, 1962, Theron C. Lynd gave Negroes more difficult sections of the Constitution to interpret than those he gave to white persons.

[fol. 1793] b. Assistance to White Applicants—

The following are Findings of Fact of the Court of Appeals in *U.S.* v. *Lynd* (contempt) with respect to assistance given to white applicants:

18.0 Between April 18, 1962 and June 21, 1962, Theron C. Lynd required Negro applicants to complete their application forms without assistance and rejected their applications if they contained errors or omissions. During the same period, Theron C. Lynd assisted white applicants in correctly and completely filling out their application forms including filling in their election district and signing the final line.

22.0 Between January 1, 1962 and March 5, 1962 Theron C. Lynd gave easy sections of the Constitution to white applicants to interpret, and from January 1, 1962 to April 10, 1962 he advised white applicants of omissions on their application forms and assisted them in completing their application forms to his satisfaction.

25.0 * During Theron Lynd's term of office as Registrar of Voters of Forrest County, Mississippi until the date of the preliminary hearing on March 5, 1962, Lynd registered white applicants if they could read and write, and if they met the qualifications of citizenship, age, residence and nonconviction of a crime. The application form was not used as a test for any white applicants during that period.

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* Finding 25.0 was adopted by the Court in the contempt case solely as a matter of historical fact.

[fol. 1794] 25.1 * During Lynd's term of office, prior to March 5, 1962, Lynd registered white applicants without requiring that they fill out an application form, or permitted them to have their forms filled in for them, and did not require that white applicants interpret a section of the Mississippi Constitution.

c. Grading of Applications:—

The following are Findings of Fact of the Court of Appeals in *U.S.* v. *Lynd* (contempt) with respect to the grading of white applications:

14.0 Between April 18, 1962, and June 26, 1962, Theron C. Lynd rejected, on account of their race, Negro applicants with near perfect application forms. During the same period, white applicants were accepted whose application forms did not contain information required by Lynd of Negroes to establish that the applicant was qualified to vote.

15.0 Between April 18, 1962, and June 26, 1962, Theron C. Lynd rejected Negro applicants, on account of race, for formal, technical, and inconsequential errors or omissions on their application forms.

16.0 Between April 18 and June 26, 1962, Theron C. Lynd scrutinized the applications of Negroes to find some grounds for rejecting them. During the same period, Theron C. Lynd did not similarly scrutinize the applications of white applicants and accepted their applications even though they contained errors or inconsistencies similar to those which formed the grounds for the rejection of Negroes.

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* Finding 25.1 was adopted by the Court in the contempt case solely as a matter of historical fact.

[fol. 1795] 17.0 Between April 18, 1962 and June 26, 1962, Theron C. Lynd discriminated against Negroes in his grading of interpretations of sections of the Mississippi Constitution.

25.2 * During Lynd's term of office up to March 5, 1962, the Constitutional Interpretation Test was not graded for white applicants.

[fol. 1796] Part III

The names in this part have a number which is the number given in answers to interrogatories Nos. 23 and 24 of the State of Mississippi, which gives background information as to each person. Specific experiences are detailed in Part I, above, by number. If the name bears no number, judgment of deprivation was made on the basis of the application form.

a. Negroes Denied the Right to Vote Because of the Interpretation Test—

Number	Name	Date
18119	Willie Thigpen	5/12/62
18119	Willie Thigpen	5/29/62
18141	Annie Pool	6/21/62
18121	Mattie Lee Townsend	5/7/62
	Willie C. Woods	5/29/62
	Benjamin Patterson	1/30/61
18065	Myles Jones	1/31/61
18119	Willie Thigpen	2/1/61
18049	Sam Hall	2/4/61
	George D. Johnson	2/4/61
18031	James C. Chandler	9/28/61
18119	Willie Thigpen	10/16/61

b. Negroes Denied Right to Vote Because of Perfect Form Requirement—

(Findings of Court of Appeal, *U.S. v. Lynd* (contempt) with respect to the following forms)

* Finding 25.2 was adopted by the Court in the contempt case solely as a matter of historical fact.

18.14 The application forms of the following Negroes show that each applicant is qualified to register to vote in Forrest County, Mississippi. They show that each applicant possesses the qualifi- [fol. 1797] cations of citizenship, age, and residence in the State and election district. They show that there applicants have not been convicted of any disqualifying crimes and that each applicant took the oath as required by Mississippi law. These applications reflect that each applicant wrote and gave a reasonable interpretation of a section of the Mississippi Constitution, and demonstrated an understanding of the duties and obligations of citizenship under a constitutional form of government. The application forms of these Negro applicants had error or omissions in the election district, in the applicable oath, or in signing the final line.

Number	Name	Date
18073	Robert Lewis	4/18/62
18101	David Roberson	4/18/62
18134	Earline Boyd	4/23/62
18136	Victoria Gray	4/23/62
18059	Annie Mae James	4/23/62
18138	Arthur James	4/23/62
18069	George Kelly	4/23/62
18142	Wayne Sutton	4/23/62
18119	Willie Thigpen	4/23/62
18006	John Barnes	4/24/62
18011	Ken Beard	4/24/62
18135	James Cohen	4/24/62
18059	Annie Mae James	4/24/62
18140	Leonard Ponder	4/24/62
18141	Annie Pool	4/24/62
18113	Bettie Jean Stepps	4/24/62
18058	Sherman Jackson	4/28/62
18119	Willie Thigpen	4/28/62
18130	Theodor Williams	4/28/62
18105	Iva Sandifer	5/3/62
18119	Willie Thigpen	5/3/62
	Andrew Wilson	5/3/62
18105	Iva Sandifer	5/4/62
18119	Willie Thigpen	5/4/62
18141	Annie Pool	5/7/62
18132	Constance Baker	5/11/62
18006	John Barnes	5/11/62
18032	Alfonso Clark	5/11/62
	Thomas Davis	5/11/62
18137	George Harper	5/11/62
18101	David Roberson	5/11/62

[fol. 1798]

Number	Name	Date
18049	Rev. Sam Hall	5/12/62
18058	Sherman Jackson	5/12/62
18061	Rev. Dewey Johnson	5/12/62
18105	Iva Sandifer	5/19/62
18139	Carrie Magee	5/23/62
18077	Clarence Magee	5/23/62
18139	Carrie Magee	5/24/62
18077	Clarence Magee	5/24/62
18077	Clarence Magee	5/28/62
18077	Clarence Magee	5/29/62
18133	Nehemiah Black	6/6/62
18059	Annie James	6/6/62
18077	Clarence Magee	6/6/62
	Ollie Does	6/15/62
18136	Victoria Gray	6/15/62
	Catherine Jackson	6/15/62
18140	Leonard Ponder	6/15/62
	Gloria Bivins	6/21/62

The following Negroes were not covered by the period included in the Court of Appeal's finding; all were deprived of the right to vote because of the perfect form requirement; each had errors or omissions in election district, in the applicable oath or in signing the final line:

Number	Name	Date
	Eddie L. Thornton	1/30/61
18106	Willie Simpson C.	2/1/61
18058	Sherman C. Jackson, Sr.	2/4/61
18101	David E. Roberson	3/2/61
18022	Addie N. Burger	4/8/71
18106	Willie C. Simpson	9/27/61
18098	Wayne K. Pittman	9/28/61
18073	Robert L. Lewis	9/29/61
18112	Jesse Stegall, Sr.	9/29/61
18022	Addie N. Burger	10/9/61
18084	Cornell McCree	10/10/61
18101	David E. Roberson	10/12/61
18142	Wayne Sutton	10/12/61
18054	Eloise T. Hopson	10/17/61
18105	Iva E. Sandifer	10/17/61
	George D. Johnson	2/24/62

[fol. 1799] Greene County #69

Part II

Application Forms

1 & 2. Number of Application Forms

Period includes forms from 4/8/55 to 7/19/62.

White

Accepted	748
Rejected	0

Negro

Accepted	2
Rejected	0

3. Analysis of Forms

a. Selection of Constitutional Sections

Section	Number of Applicants
9	1
14	6
21	1
22	7
30	701
No Section (or interpretation)	34

b. Assistance to White Applicants

(1) The answers to Questions 18, 19 and 20 on the applications of the following white registrants were written by one person.

Date of Application	Name
6-30-59	Wanda H. Breland
7-2-59	Thomas J. Brewer
7-1-59	Joe E. Cowart
2-19-60	Robert C. Dobson
3-24-60	Ronald L. Eubanks
6-27-59	Claude C. Gibson
6-20-59	James K. Henderson

[fol. 1800]

Date of Application	Name
4-16-59	Shirley Hamilton
3-7-59	Mrs. J. E. Miller
6-23-59	I. V. Kittrell
4-1-60	J. D. McLeod
1-30-59	Mary Lou McCoy
7-1-59	Ora Mae McDonald
7-2-59	Jessie E. Thornton
5-19-59	Wayne Organ
1-31-59	Elizabeth W. Smith
4-11-59	Lenora E. Stringfellow
8-14-58	Myrtie R. Turner

(2) The answers to questions 18, 19 and 20 on the applications of the following white registrants were written by one person, but not the same person who wrote the answers on the applications of the persons listed in (1) above.

Date of Application	Name
6-8-56	Ethel Clark
4-23-59	James Crocker
2-6-59	Roland D. Daughdrill
6-22-59	Nelda Fairley
8-12-58	Graham Hillman
2-11-60	Myrtle Kittrell
4-7-58	Rosie Lee Kittrell
1-8-59	Josh Miller
2-7-59	Hugh A. McLinnis
7-3-56	Edward Pridgen
2-12-59	John Robert Pipkins
3-28-58	N. Ray Turner

(3) The following groups of registrants had verbatim answers to both questions 19 and 20.

(a) Group I

The applicants listed below interpreted Section 30 by stating:

[fol. 1801] "No one can be put in prison for owing someone a debt."

Each one of these answered Question 20 with the following statement:

"Pay all taxes Vote in all elections Defend your own country"

Date of Application	Name
9-1-56	Bobby W. Avera
11-29-56	William Byrd
5-24-57	Hilman Hilton
10-18-56	Jefferson D. Merritt
12-29-56	Robert C. Seeley
10-12-56	Billy G. Robertson

(b) Group II

The applicants listed below interpreted Section 30 as follows:

"No one can be put in prison for owing some one a bill".

Their answer to Question 20 was:

"Obey all law" (or "laws").

Date of Application	Name
1-24-58	Mrs. Arlin R. Bush
3-7-59	J. L. Box
7-10-58	Clancy Mae Brownlee
2-18-58	James T. Byrd
1-27-58	Mrs. Artis G. Clark
7-14-58	Billy J. Daughdrill
1-31-58	Madolyne Druitt
1-21-58	Ruth Grimes
1-27-58	Gordon M. Garretson
1-23-58	Marian M. Hicks
4-16-59	Shirley Hamilton
1-9-59	C. W. Harrison
2-25-59	Murdick R. Hillman
1-30-58	Emma R. Henderson

[fol. 1802]

1-28-58	Allison Merritt
1-27-59	Marian E. Pierce

Date of Application	Name
1-30-58	Mrs. Frances Rickey
1-31-58	E. C. Robertson
2-20-58	Chas. R. Robertson
1-12-59	Earl Vanderford

(c) Group III

The applicants listed below interpreted Section 30 with the identical sentence used by those in Group II ("No one can be put in prison for owing someone a bill").

They answered Question 20 with the following statement (in a few forms the order is reversed):

"Obey all laws. Vote in all elections".

Date of Application	Name
5-30-59	Robert C. Miller
2-7-59	Patricia A. Jenkins
2-7-58	Roy Hamo
2-4-59	Thomas S. Henderson
6-9-59	Mrs. Hosey Henderson
9-20-58	Charles O. Freeman
3-24-60	Ronald L. Eubanks
6-7-59	Mrs. James Ezell
9-26-57	Marian V. Eubanks
10-5-57	Sally E. Eubanks
3-23-59	James L. Crocker
3-24-59	Mrs. Mildred B. Churchwell
10-25-58	McRae Clark
1-22-59	R. D. Cooley
2-7-58	James Beech
4-24-58	Nancy V. Beard
7-7-58	Johnny A. Brewer
1-23-59	Mrs. Bobby S. Brewer
4-9-59	Mrs. J. L. Busby
5-6-57	Mrs. Wilena S. Williams
1-26-59	J. T. Watson
11-13-57	Leonard Roberts
2-12-59	John R. Pipkins
6-20-58	C. E. McDonald
2-7-59	Hugh A. McInnis

[fol. 1803] (d) Group IV

The applicants listed below interpreted Section 30 with the identical language used by the applicants in Groups II and IV above ("No one can be put in prison for owing someone a bill").

Their answer to Question 20 was:

"Obey all laws, pay all taxes".

Date of Application	Name
6-9-59	Carol Breland
4-15-59	Horace R. Dixon
3-21-59	Catherine Harrison
1-17-59	Mrs. W. B. Hillman
9-20-58	Lewis Mc Innis
5-7-59	B. P. Pierce
2-14-59	Ethan G. Roberts
1-29-59	Margaret A. Smith
11-12-57	David C. Walley

(e) Group V

The applicants in this group interpreted Section 30 as follows:

"No one can be imprisoned for owing a bill".

Their answer to Question 20 was identical to the answer to Question 20 of those listed in Group III ("Obey all laws. Vote in all elections").

Date of Application	Name
6-9-59	Edgar C. Latham
6-15-59	S. C. Killen
6-22-59	Gary Hillman
6-25-59	Elaine Hillman
6-15-59	William T. Stewart
6-11-59	Faye J. Smith

[fol. 1804] (f) Group VI

The interpretation of Section 30 by the following applicants is identical to the interpretation given by the persons listed in Group IV ("No one can be put in prison for owing someone a bill").

Their answer to Question 20 was:

"Obey all laws. Pay all taxes. Vote in all elections".

(Sometimes the order was reversed.)

Date of Application	Name
6-9-59	Max Brewer
10-2-58	Guy G. Byrd
10-16-57	Birl E. Clark
8-2-58	J. L. Freeman
10-25-57	Ernest Hudson
11-4-57	Donald R. Sprague

(g) Group VII

The interpretation of Section 30 of the following applicants is identical to the interpretation given by the applicants listed in Groups IV and VI ("No one can be put in prison for owning someone a bill").

Their answer to Question 20 is identical to the answer given by the applicants listed in Groups III and V ("Obey all laws, vote in all elections").

Date of Application	Name
2-2-59	Howard E. Thornton
2-6-59	Roland D. Doughdrill

[fol. 1805] (h) Group VIII

The following applicants interpreted Section 30 as follows:

"No one can be put in jail for owing someone a bill".

Their answer to Question 20 was:

"Vote in all elections, pay all taxes".

Sometimes the order of this statement was reversed.

Date of Application	Name
6-6-57	A. T. Cowart
2-23-57	Truman Clark
9-26-57	Mayo Ball

(i) Group IX

The following applicants interpreted Section 30 as follows:

"No one can be imprisoned for owing a bill".

This interpretation is identical to the interpretation used by the applicants listed in Group V.
Their answer to Question 20 was:

"Obey all laws, pay all taxes".

This answer is identical to the answer of the persons listed in Group IV.

Date of Application	Name
8-27-58	Aubrey L. Freeman
6-22-59	Margaret E. Mcleod
6-29-59	Mrs. C. E. McNair

[fol. 1806] (j) Group X

The following applicants interpreted Section 30 as follows:

"No one can be put in prison for owing someone a bill".

This interpretation is identical to that given by the applicants listed in Groups IV, VI and VII.
Their answer to Question 20 was:

"Vote in all elections. Pay all taxes".

This answer is identical to the answer given by the applicants listed in Group VIII.

Date of Application	Name
2-5-57	Mrs. E. S. Holland
7-26-59	Jacquilin Flynn

(4) Assistance in Question 19

Groups of Identical Interpretations

(a) 10 applicants interpreted Section 30 by stating "No one can be put in prison for owing someone a debt". This interpretation is identical to the interpretation given by the applicants listed in 3(a) above (Group I).

(b) 40 applicants interpreted Section 30 by stating:

"No one can be put in prison for owing someone a bill".

This interpretation is identical to the interpretation given by the applicants listed above in 3(b) (Group II), 3(c) (Group III), 3(d) (Group IV), 3(f) (Group VI), 3(g) (Group VII) and 3(j) (Group X).

[fol. 1807] (c) 14 applicants interpreted Section 30 by stating:

"No one can be put in jail for owing someone a bill".

This interpretation is identical to the interpretation given by the applicants listed above in 3(h) (Group VIII).

(d) An additional 30 applicants interpreted Section 30 by stating:

"No one can be imprisoned for owing a bill".

This interpretation is identical to the interpretation given by the applicants listed above in 3(e) (Group V) and 3(i) (Group IX).

(5) Assistance to Question 20

Groups of Identical Answers to Question 20

(a) 20 applicants answered Question 20 by stating:

"Obey all law" (or laws)".

This answer is identical to the answer given by the applicants listed above in 3(b) (Group II).

(b) 40 applicants answered Question 20 by stating:

"Obey all laws. Vote in all elections".

This answer is identical to the answer given by the applicants listed above in 3(c) (Group III), 3(e), (Group V) and 3(g) (Group VII).

[fol. 1808] (c) 96 applicants answered Question 20 by stating:

"Obey all laws. Pay all taxes".

This answer is identical to the answer given by the applicants listed above in 3(i) (Group IX) and 3(d) (Group IV).

(d) 10 applicants answered Question 20 by stating:

"Obey all Laws, pay all taxes, vote in all elections".

This answer is identical to the answer given by the applicants listed above in 3(f) (Group VI).

(e) 10 applicants answered Question 20 with this statement:

"To defend the country in time of war. To pay all taxes required. To obey and help enforce all the laws. To pay all taxes legally required and vote in any and all elections".

(f) At least 65 forms have "XX" marks near the lines on which the applicant must sign as to the oath and the final applicant's signature line.

(6) Grading

(a) 34 registrants had no interpretation in answer to Question 19 or lack an answer to Question 20.

[fol. 1809] Jefferson Davis County #70

Part I

A

The following Negro citizens of Jefferson Davis County who previously had been registered to vote in that County were required (by Circuit Clerk James Daniel) to fill out application forms and interpret sections of the Mississippi Constitution when they attempted to re-register following the 1956 re-registration. All events took place at the office of the Circuit Clerk, Prentiss, Mississippi.

33080	3/63	Went to registration office with husband, Amos L. Laird, to re-register. Husband told Daniel he wanted to register so he could be a citizen. Daniel said they don't have to register and vote to be a citizen, and that he did not have time, he had many letters to get out. Mrs. Laird said Daniel should let them try. He gave her written application form to fill out, gave Mr. Laird oral test. On 4/11/63 they had not yet received results of this test.
33153	2/5/63 Rejected	Went to Daniel's office to attempt to re-register and was given a form to fill out. She did not complete the form. On 3/7/63 Daniel advised that she failed.
33029	1/30/63 Rejected	Went to re-register at Daniel's office and was required to fill out an application form. Daniel refused to register her.
33102	1/21/63	Went to re-register at Daniel's office and filled out application form. On 2/14/63 Daniel advised that she failed.

[fol. 1810]

33080	1/11/63 Rejected	Went to Daniel's office with husband to attempt to re-register. Daniel gave her a written form to complete which she completed. On 2/7/63, Daniel advised her that she failed. Did not appeal because Daniel said to husband if he appealed he would go to the law with it, and because another Negro had advised husband that he should stay away from B. C. Clark, one of the commissioners.

33050	12/60 Rejected	Went to attempt to re-register at Daniel's office and was given a form to complete. He did this and then Daniel said he had not passed.
33050	1960, summer Rejected	Went to re-register at Daniel's office and was given the form to complete. Again, after his completing the form, Daniel said he did not pass.
33050	Early 1960 Rejected	Went to re-register at Daniel's office and was given a form to fill out. After he completed the form and gave it back to Daniel, Daniel advised that he had not passed. He then left.
33111	1959 or 1960 Rejected	Went to registration office to re-register. Received form. Daniel said her answers did not come up to the specifications.
33104	About 1959 Rejected	Went with Oliver Blanchard to registration office to re-register. They asked if they still had to fill out forms. Daniel said yes. Blanchard said he had been registered before. Daniel said that did not count, he would have to fill out a form. They left.
33040	1959 Rejected	Went to registration office to re-register. Received application form. Daniel looked at form, said she failed.

[fol. 1811]

33000	1958 Rejected	Went to Daniel's office to attempt to re-register and was given a form to fill out. He filled it out, and was then given a section to read and interpret. Daniel advised him at that time that he did not pass.
33104	About 1958 Rejected	Went alone to registration office, told Daniel he wanted to register. Daniel gave him a form. Moore said, "I'm afraid I can't fill this out." Daniel told him that was his business.

33091	1958	Went to registration office to re-register. Received application form. Could not complete the form. He left.
33091	1958 Rejected	Went to registration office to re-register. Received application form. Could not complete it. Filled out about half and left. Since he was working, he did not return to finish it.
33073	1958 Passed	Went to re-register and was given a form to fill out and an oral test. He passed and was allowed to register.
33143	2/28/58 Accepted	After three unsuccessful attempts to re-register within one or two months, went to registration office with Mrs. Mabel Armstrong. They are both schoolteachers. Completed application form. Daniel permitted her to re-register.
33003	2/28/58 Accepted	After three unsuccessful attempts to re-register, Mrs. Armstrong went to the registration office with Mrs. Mamie L. Uston. They are both schoolteachers. She filled out a form, and Daniel allowed her to re-register to vote.

[fol. 1812]

33064	2/20/58 Rejected	Went with husband, Gaston Holloway, to re-register. Was required to complete written form, and to copy and interpret in writing Section 32 of the Constitution. Daniel looked at completed form and said she didn't quite make it. Form was introduced in evidence in *Darby* v. *Daniel*.

33065	2/20/58 Rejected	Went to registration office with wife, Genora Holloway, to re-register. Received form to complete, with Section 123 of Constitution to copy and interpret. Daniel looked at completed form and said he did not pass. Applicant said he had been voting for 25 years and was sorry that they would have to come back again. Later, form was introduced into evidence in *Darby* v. *Daniel*.
33003	2/58 Rejected	About a week after her second attempt to re-register, she went to the office of the Circuit Clerk with Mrs. Mamie L. Uston. Filled out a new application form. Daniel said they could come back.
33143	2/58 Rejected	Went to registration office to re-register with Mrs. Mabel Armstrong, about a week after their previous attempt. Required to fill out application form. Daniel told her she did not pass, but said they could come back.
33143	Jan. or Feb. 1958 Rejected	Went to registration office to re-register with Mrs. Mabel Armstrong, about a week after their previous attempt. Required to fill out application form. Daniel told her she did not pass.

[fol. 1813]

33003	2/58 Rejected	Attempted to re-register at office of the Circuit Clerk with Mrs. Mamie L. Uston, about a week after her first attempt to re-register. Filled out an application form. Daniel told her she did not pass.
33143	2/58 Rejected	Went to registration office with Mrs. Mabel Armstrong to re-register. Filled out application form. Daniel told her she did not pass.

33003	Jan. or Feb. 1958 Rejected	Attempted to re-register at office of the Circuit Clerk with Mrs. Mamie L. Uston. Filled out application form. Daniel told her she did not pass.
33132	Feb. 1958 Rejected	Went alone to Daniel's office to re-register. Daniel gave him an application form and a section of the State Constitution to copy on the form from a book. He gave the form to Daniel, who did not say anything. Applicant assumed Daniel's silence meant he had failed.
33023	1/31/58 Rejected	Went to Daniel's office to attempt to re-register along with his wife. They were given forms to complete, and a section of the Constitution to read and interpret. Being unable to comply, he left the office.
33086	About 1957 Rejected	Went to registration office with husband. Each received a section of the Constitution to interpret in writing. Daniel put their completed papers on the desk and continued to talk to a white man. They waited for about five minutes and since Daniel did not say anything they left.
33131	1957 Rejected	Went to Daniel's office to re-register with his wife and were given forms to fill out. They made no attempt to fill out the form.

[fol. 1814]

33015	12/57 Rejected	Went to registration office with Dudley Hathorne to re-register. Received application form and a section of the Constitution to copy and interpret in writing. Was not permitted to register.

33056	12/57 Rejected	Went to registration office with John C. Burns, another Negro, to re-register. Received application form and Section 146 of the State Constitution to copy and interpret in writing. Daniel said application was not correct. Neither he nor the other Negro were permitted to register.
33124	12/57 Rejected	Went alone to Daniel's office to re-register and was handed the form and told by Daniel to write down part of the Constitution. Since he couldn't do that, he returned the form and left.
33020	4/22/57 Rejected	Attempted to re-register. required to fill out a form and interpret Section 123 of the Constitution, but was not registered.
33083	Jan. 1957 Rejected	Went to registration office to re-register. Required to complete written application form, and write an interpretation of a section of the Mississippi Constitution. Daniel said he didn't make it.
33132	Jan. or Feb. 1957 Rejected	Went alone to registration office to re-register. Filled out first page of application form, but did not know how to fill out second page. Left it blank. Daniel did not say anything about the form, nor did he say whether Ross had passed. Applicant assumed that Daniel's silence meant he had failed. During this attempt to re-register, applicant said he had always been a citizen and that he hated to lose his citizenship. Daniel made no reply.

[fol. 1815]

33096	1956 or 1957 Rejected	Went to registration office, told Daniel he wanted to re-register. Received application form, filled it out as well as he could. Daniel said he didn't quite make it.
33054	1956 or after Accepted	Went with wife to registration office. Received application form, and section of the Constitution dealing with forgery to copy and interpret. Wife thinks she received another section.
33041	1956-1957? Rejected	Went with wife to re-register at Daniel's office and was given the form to complete. After he filled out the form, he gave it to Daniel who said he failed.
33033	About 1956 Rejected	Went to registration office. Received form. Gave completed form to Daniel, who said he did not pass.
33056	1956 Rejected	Went to registration office to re-register. Required to complete written application form and to copy and interpret in writing section of the Mississippi Constitution. Was told he did not pass.
33085	1956 Rejected	Went to Daniel's office to attempt to re-register and was given a form to fill out. As he could not answer the questions, he left the office.
33096	About 1956 Rejected	Went to registration office to re-register. Received application form. Filled it out as well as he could. Daniel told him he didn't quite make it.
33111	1956 Rejected	Went to registration office to re-register. Received application form. Daniel looked at completed form, said she did not pass.

33118	1956 Rejected	Went to registration office to re-register. Received application form and section of Constitution to copy and interpret in writing. Completed form, Daniel said she did not pass.

[fol. 1816]

33118	1956 Rejected	On same day as previous attempt, went to registration office, filled out application form, asked if she passed, Daniel said no. She left.
33131	1956 Rejected	Went with wife to attempt to re-register and were given forms to complete. They filled out forms and handed them to Daniel and asked if they had passed. Daniel said no as they did not answer the questions right.
33142	1956 Rejected	Went with wife to attempt to re-register and was given forms by Daniel to complete as well as to write a section of the Constitution and interpret it. He did not fill out the form.
33155	1956 Rejected	Went to registration office to re-register. Daniel ignored her until she went to him and asked to register. Received form, which she filled out. Daniel said she missed a question, but refused to say which one.
33070	Fall, 1956 Rejected	Went alone to registration office to re-register. Received application form and Section 17 of the Mississippi Constitution to copy and interpret in writing. About 8 Negroes and 8-10 white people were in the office. There was space at tall desks for two Negroes and two whites to stand working on their forms at once. Waited in the colored line for 15 or 20 minutes, studying the Constitution. Worked on answer about 15

more minutes, then gave Daniel forms. Daniel looked at them, said it wasn't quite right.

33065	Sept. or Oct. 1956 Rejected	Went to re-register with his wife, Genora Holloway, and John Barnes. Was required to complete a written application form. Daniel looked at completed form and said he did not pass.

[fol. 1817]

33011	Sept. or Oct. 1956 Rejected	Went to registration office to re-register with Gaston and Genora Holloway, also Negroes. Required to complete written application form, with section of Constitution to copy and interpret. Daniel received with form section of Constitution to copy and interpret. Daniel received form, said he didn't quite make it.
33064	Sept. or Oct. 1956 Rejected	Went to re-register with her husband, Gaston Holloway, and John Barnes. Was required to complete a written application form. Daniel looked at completed form and said she didn't quite make it.
33015	July or Aug. 1956 Rejected	Two or three weeks after previous attempt to re-register, went to registration office, received application form. Completed form and gave it to Daniel, who told him he did not pass.
33015	July or Aug. 1956 Rejected	Went to registration office to re-register, Daniel gave him application form. Completed form, and gave it to Daniel, who said applicant did not pass.

33005 July 1956 Rejected

Went alone to registration office, which was crowded. Stood at tall desk near door. Received application form and section of State Constitution to copy and interpret in writing. Daniel took completed form, went in to back room. After 15 or 20 minutes Daniel returned and said Barnes didn't quite make it but could come back.

33065 7/5/56 Rejected

Went to registration office to re-register with Genora Holloway, his wife. Mrs. Matheson, a white woman was in the office at the same time. She sat at a low table, apparently filling out an application form. The Holloways were required to stand at a tall table and fill out forms. Mrs. Holloway testified that Daniel talked to Mrs. Matheson while she was working on her form. Daniel read the completed forms and told Mr. and Mrs. Holloway they didn't pass.

[fol. 1818]

33064 7/5/56 Rejected

Went to registration office to re-register with Gaston Holloway, her husband. Were required to complete application forms, and copy and interpret a section of the Constitution. Daniel read completed forms, said "You didn't quite make it." When Mrs. Holloway asked to see her form again, Daniel refused.
Mrs. Matheson, a white woman was sitting at a table apparently filling out an application form. The Holloways had to stand at a tall table. Mrs. Holloway testified that Daniel talked to Mrs. Matheson while she worked on form.

33020	6/24/56 Rejected	Attempted to re-register. Was required to fill out form and was not registered.
33056	4/11/56 Rejected	Went alone to registration office to re-register. Required to fill out form and copy and write an interpretation of Section 61 of Mississippi Constitution. Daniel said his interpretation was not right, and refused to register him.
33011	Apr. 1956	Went with his wife to registration office to re-register. Said they wanted to get their names back on the books. Required to complete application form, copy and interpret in writing section of Constitution. Daniel looked at completed form and said he didn't quite pass. His wife passed.
33124	Dec. 1956 Rejected	Went to re-register and Daniel handed him a form which he filled out about half way. When Daniel said he had to put down a section from the Constitution, he handed the form back and left.

[fol. 1819]

33009	4/6/56 Accepted	Went to registration office with husband, John F. Barnes, to re-register. Received application form, and probably Section 209 of the Constitution, relating to duties of the State to the blind, providing education for the blind. Mr. Daniel took a copy of this Section, typewritten on a slip of paper, out of a drawer which contained many forms. It appeared to her that he had looked at several slips before deciding which provisions he would give to her and her husband. After they completed forms, Daniel looked at them and said that Mrs. Barnes passed, her husband did not.

33027	4/6/56 Rejected	Went to registration office with his wife to re-register. Was not asked if he had previously registered. Received application form and Section 21 of the Constitution to copy and interpret in writing. (Wife received Section 198). Daniel was not in office. Gave completed form to the white woman who was there. Later wife returned and was told neither of them had passed.
33026	4/6/56 Rejected	Went with husband to registration office to re-register. A woman, believed to be Mrs. Daniel, the registrar's wife, gave them application forms and gave her Section 198 and her husband Section 21 to interpret. When forms were completed, told to return later to determine results. Later she returned. Daniel said neither one had passed.
33083	3/31/56 Rejected	Went to registration office with Excell Richmond, another Negro. Required to complete written application form. Daniel said he did not pass.

[fol. 1820]

33126	About 3/13/56 Accepted	Went to registration office to re-register. Received written application form and Section 32 of the Mississippi Constitution to copy and interpret in writing. Was permitted to register.
33112	Summer 1956 Rejected	Went to registration office to re-register. Received application form and section of State Constitution. Daniel looked at his form and said he didn't pass. Applicant asked why he failed, Daniel would not say. Applicant asked for another blank, Daniel said the law did not provide for that, but he could come back some other time.

33132	Jan. or Feb. 1956 Rejected	Went alone to registration office to re-register. Filled out first page of application form but since he did not know how to fill out second page, he left that blank. Daniel said the first page looked all right, and said nothing about the second. Daniel did not say whether Ross had passed. Ross assumed Daniel's silence meant he had failed.
33162	Late 1950's Rejected	Has been up several times to re-register. Each time Daniel gave her a form to complete, and each time she gave it back incomplete.
33163	Late 1950's Rejected	Has attempted to re-register when he pays poll tax but has not been permitted to register as he does not interpret the section which Daniel gives to him to Daniel's satisfaction.
33041	1950's Rejected	Went alone to attempt to re-register at Daniel's office and was given a form to complete. After completing the form he gave it to Daniel who said it was not satisfactory.

[fol. 1821] Jefferson Davis County #70

B

The following Negro citizens of Jefferson Davis County who had been previously registered to vote in that county were required by Circuit Clerk James Daniel to read *and* interpret a section of the Mississippi Constitution when they attempted to re-register in that county following the 1956 re-registration. All of the following events took place at the office of the Circuit Clerk, Prentiss, Mississippi.

33092	1950's Rejected Daniel	Went to Daniel's office to attempt to re-register and was given a section to read and interpret. Daniel was not satisfied with the interpretation. not satisfied with the interpretation.

33155	1957 Year not certain Rejected	Went to registration office to re-register. Daniel gave her section of Constitution and told her to read it aloud and interpret it orally. After she did, Daniel said interpretation was not full enough.
33060	About 1957 Rejected	Went to registration office to re-register. Received article of Mississippi Constitution which she read and interpreted. Daniel said her interpretation was not correct. When asked, Daniel said she could come back.
33077	1957 Rejected	Went with wife to attempt to register at Daniel's office and were given a section of the Constitution to read and interpret. Daniel told him he did not do it satisfactory.
33115	1957 Rejected	Went alone to Daniel's office to attempt to re-register and was given a form to complete. Daniel advised him that he did not correctly answer the questions.

[fol. 1822]

33096	After 1957 Rejected Daniel	Went to registration office to re-register. Was required to read aloud and interpret section of Constitution. Daniel said he didn't pass.
33096	About 1957 or 1958 Rejected	Went to registration office to re-register. Was given section of Constitution to read aloud and interpret orally. Daniel said he didn't quite make it.
33051	1957 or 1958 Rejected	Went to re-register. Received section of Constitution to read and interpret orally. Daniel said he could not register because he did not understand section well enough.

[fol. 1835]

33032	Probably 1/28/63 Rejected	Went to Daniel's office to attempt to re-register. Daniel had him read and interpret section 123 of the Constitution. Daniel advised him on 2/21/63 that he had failed.
33069	1/28/63 Rejected	Daniel rejected her for re-registration on the basis that she could neither read nor interpret Section 130.
33008	1/29/63 Rejected	Went to Daniel's office to re-register and was given Section 24 to read and interpret. On 2/28/63 Daniel advised that he failed.
33055	1/29/63	Went to registration office. Received Section of Constitution to interpret orally. Daniel said he would let her know if she passed. In early March her husband saw Daniel and told him that Mrs. Hall still had not received the result of her test. Daniel said he thought he had mailed it to her, but did not tell husband if she passed. On 4/10/63, she still had received no word.
33016	1/29/63 Rejected	Went to Daniel's office to attempt to register. Daniel had him read and interpret Section 15 of the Constitution. Daniel advised him on 2/28/63 that he failed.
33043	1/29/63 Rejected	Went to David's office to attempt to re-register and was given Section 25 to read and interpret. On 2/28/63 Daniel advised that he had failed.

33155	1958 (Year not certain) Rejected	Went to registration office to re-register. Received section of Constitution to read aloud and interpret orally. Daniel said interpretation wasn't full enough.
33000	1958 Rejected	Went to register and Daniel gave him a section to read and interpret. At this time Daniel advised that he had failed.
33000	1958 Rejected	Went to re-register at Daniel's office and was given a section to read and interpret. Daniel advised him at that time that he had failed.
33066	1958 Rejected	Went to Daniel's office to re-register and was given a section to read and interpret. Daniel advised that the interpretation was not satisfactory.

[fol. 1823]

33118	About 1958 Rejected	Went to registration office to re-register. Received section of the Constitution which she read aloud and interpreted orally. Daniel said she didn't pass.
33060	About Summer 1958 Rejected	Went to registration office. Daniel had company. When they left, he gave her section of Constitution to read and interpret. Daniel said interpretation wasn't quite right. She asked what is wrong, he said he could not tell her. She said she thought those whose names were already on the book would not have to go through that procedure. He said under the new law they did.

33012	1/29/63 Rejected	Went to re-register at Daniel's office and was given Section 28 to read and interpret. On 2/28/63 Daniel advised she had failed.

[fol. 1836]

33134	1/29/63 Rejected	Went to Daniel's office to attempt to re-register and was given Section 101 to read and interpret. On 2/21/63 Daniel advised he failed.
33122	1/29/63 Rejected	Went to re-register at Daniel's office and was given Section 30 to read and interpret. He was advised by Daniel on 2/28/63 that he failed.
33081	1/29/63 Rejected	Went to Daniel's office to attempt to re-register. Daniel gave him Section 31 to read and interpret. On 2/21/63 Daniel advised him he failed.
33013	1/30/63 Rejected	Went to Daniel's office to attempt to register. Daniel had him read and interpret Section 101 of the Constitution. Daniel advised him on 2/28/63 that he failed because he was unable to read.
33036	1/30/63 Rejected	Went to Daniel's office to attempt to re-register. Daniel had him read and interpret Section 25 of the Constitution. Daniel advised him on 2/28/63 that he had failed.
33131	1/30/63 Rejected	Went to Daniel's office to attempt to re-register and was given Section 30 to read and interpret. On 2/28 Daniel advised he had failed.

33011	About 1959 Rejected	Went to registration office to re-register. Required to read and interpret orally a section of the Mississippi Constitution. Daniel did not register him.
33132	1959 Rejected	Went to registration office to re-register; received typewritten section of the Constitution to read to himself and interpret orally. After applicant explained the section as well as he could, Daniel said he didn't make it.
33071	1959 Rejected	Went to Daniel's office to attempt to register and was given a section to read and interpret. Daniel advised him that he did not pass.
33108	1959 Rejected	Went with husband to re-register at Daniel's office and was given a form to fill out. Daniel advised her "there was a little something wrong with it" and she could not register.

[fol. 1824]

33056	1-1959 Accepted	Went to registration office to re-register. Required to read and interpret section of Miss. Constitution. Daniel said interpretation was not quite right. Hawthorne went over it again, gave ~~slightly~~ different explanation. Daniel said that was all right, allowed him to register.
33060	1-27-59 Accepted	Went to registration office to re-register. Received section of constitution to read and interpret orally. Daniel told her to sign her name.
33149	1-28-59 Passed	Went with husband to re-register and he gave them a section to interpret, after which he told her to sign her name to the registration book.

33185	About Spring 1959 Rejected	Went to registration office with another Negro man to attempt to re-register. Was given section of constitution on a strip of paper to read aloud and interpret orally. He read it, but was not able to interpret it. Daniel said he could not register.
33026	April or May 1959 Rejected	Went to husband to registration office to re-register. Daniel took them one at a time into back office. Each one received a different section of the Constitution, which they read aloud and interpreted orally. Daniel permitted husband to register, but told Mrs. Easterling her interpretation was not correct.
33026	April or May 1959 Rejected	Went to registration office to re-register. Received same section husband received and interpreted successfully a week earlier. Read it aloud, and tried to repeat exactly the interpretation her husband had told her he gave, but Daniel said her interpretation was incorrect.

[fol. 1825]

33026	April or May 1959 Rejected	Went to registration office to re-register. Received section of constitution which she read aloud and interpreted. Daniel said interpretation was incorrect.
33052	7-59 Rejected	Went alone to Daniel's office to re-register and was given a section of the constitution to read and interpret. Daniel told him he could not read or interpret it satisfactorily.

33051	July or August 1959 Rejected	Went to registration office to re-register. Received section of Constitution on piece of paper. Was asked to explain it. Daniel said he didn't understand it quite well enough and said that the law was that he would have to understand it to register.
33085	1960 Rejected	Went to register at Daniel's office and was given a section of the Constitution to read and interpret. Daniel said he didn't read it satisfactorily. Cotton Green was with him.
33071	1960 Rejected	Went to Daniel's office to attempt to register and was given a section to read and interpret. Daniel told him he did not give a satisfactory interpretation and he could not read it.
33132	1960 Rejected	Went to registration office to re-register, received typewritten section of the Constitution to read to himself and interpret orally. After applicant explained the section as well as he could, Daniel said he didn't make it.

[fol. 1826]

33155	1961 Rejected	Went to registration office to re-register. Received section of Constitution to read aloud and interpret orally. Daniel said interpretation was unsatisfactory.
33133	1-1961 Rejected	Went to re-register at Daniel's office but was given a section to interpret and read. Daniel advised him that his attempt at interpreting was not satisfactory.
33146	Jan. or Feb. 1961 Rejected	Went with her husband to try to re-register. Daniel gave them a strip of paper with a section of the Constitution on it to interpret orally. Daniel told her she did not pass.

33147	2-1961 Rejected	Went to registration office with his wife to re-register. Was given a section of Constitution typed on a strip of paper, and was asked to give oral interpretation. Mr. Daniel said, "You didn't quite make it."
33147	2-1961 Rejected	Went alone to the registration office to re-register. Daniel asked him if he reckoned he could make it and whether he had been studying. Was given a typed section of the Constitution and was told to read it to himself and give an oral interpretation. Daniel told him "You didn't quite make it."
33147	2-1961 Rejected	Went by himself to re-register. Daniel asked if he had been studying and Ward stated he had. Ward was given a section of the Constitution on a small piece of paper to read to himself and interpret orally. Registrar informed Ward that he "didn't quite make it."

[fol. 1827]

33132	5 times in early 1961 Rejected	Went alone to registration office to re-register. Received typewritten section of the Constitution to read to himself and interpret orally. After applicant explained the section as well as he could, Daniel said he didn't quite make it. The section of the Constitution was different from the one he had received on his previous attempt.

33064	11-6-61 Accepted	Went to registration office with husband, who said they wanted to re-register. Daniel took them into office one at a time, gave her section of constitution to read to herself and interpret. Not required to read aloud. Daniel asked if she had ever been convicted of a crime, and if she was a member of a church. She answered no to first question, yes to second. Daniel gave her book to sign.
33065	11-6-61 Accepted	Went to registration office with wife, Genora Holloway. Said they wanted to re-register. Daniel took him into his office, gave him section of the constitution to read to himself and interpret orally. Before Daniel registered him, he asked if Holloway had "allowed them to use your name to prosecute me." Holloway said not directly, but he had answered FBI questions. Daniel asked how many wives he had had, how many children, if he had ever been arrested, ever convicted, if he was a church member, and if he had any children outside of wedlock. Holloway answered he had been married twice (his first wife died), had only one set of children, had spent one night in jail, had no children out of wedlock Holloway was permitted to register.

[fol. 1828]

33057	About 2-5-62 Rejected	Went to registration office with sister-in-law, Lauraree Hall to re-register. Daniel took them into inner office one at a time. Daniel gave her section 123 of the Mississippi Constitution to read to herself and interpret. She said, if a person had committed a

crime she thought he should be punished for that crime. Daniel said what she said was right, but did not answer the section. She left.

33104 4-30-62
Rejected

Went to registration office at 4:30 p.m. with Charlie, Frankie Ann Moore, T. R. Powell, Ida Mae Powell, Curtis Moore, John B. Gholan, Betty Moore (19 yrs. old), Shelly Mae Powell (20 yrs. old), and Florence Nicholson, all Negroes. Daniel asked who had previously registered, and took the three who said they had, including Ernest Moore, into a back room. Daniel said he could not find records of their registration and gave two of them, Frankie Moore and Florence Nicholson, application forms. Daniel gave E. Moore a slip of paper. Moore reports that Daniel asked him if he could memorize the Constitution and interpret it. Ernest Moore said no. Daniel, Ernest Moore, and the sheriff returned to the outer room where the others who had not previously registered were filling out forms. At 5:00 they all were told to leave, even though their forms were incomplete.

33057 5-7-62
Rejected

Went to registration office to re-register in the morning. Daniel gave her section 104 of the State Constitution to read to herself and interpret. He said the answer was incorrect.

[fol. 1829]

33057	5-7-62 Accepted	She entered registration office in the afternoon. Daniel gave her section 146 of the Miss. Constitution, which she read to herself and successfully interpreted. Before interpreting, she said she was tired of being a second class citizen. Daniel said there was nothing to that. She said, yes, there was. After the test Daniel said "Well, you finally made it. Come sign the book."
33146	5-7-62 Rejected	Went to registration office with her daughter, Hattie Virginia Ward (20 yrs. old), her son, James Lee Ward, and Maisie Holloway (Negro, also 20 yrs. old). She wanted to re-register, the three others to register. Daniel gave her son an application form, gave her section 104 to interpret orally. She said it meant no person should enter a lawsuit against Mississippi or any of the branch offices. When he told her that was wrong, she tried to rephrase it. When she asked him to explain it to her, Daniel asked if she thought he would help her with something when she wanted to go to law against him. She asked if she could use the library in the courthouse and he said there was no library there.

[fol. 1830]

33161	2/26/63 Rejected	Went to Daniel's office to attempt to re-register and was given Section 6 to read and interpret. On 2/21/63 Daniel advised he failed.

33165	4/1963 Rejected	Went to re-register in April. Asked to read and then to interpret when Daniel read it back to her. Received a notice of rejection some time later, and appealed to the Board of Election Commissioners. She appeared and was asked to read for them. One replied "you didn't miss a word." Mr. Daniel then read the Section to her. The Board member then said "you didn't sound like Mr. Daniel. Since Mr. Daniel said you failed, I'll say you failed." She was then advised to see an attorney. She was not asked to interpret on her appeal.
33105	4/22/63 Rejected	Went to re-register at Daniel's office and was given Section 20 to read and interpret. On 5/16/63 Daniel advised that he had failed.
33012	4/27/63 Rejected	Went to registration office to re-register. Received Section 130 to read and interpret orally. Daniel advised by letter dated 5/23/63 that she was rejected.
33181	End of May, 1963 Rejected	Previously having been registered she attempted a number of times; last time in May 1963. Though she was told by Daniel that she had read pretty fair she was not registered.
33097	5/20/63 Rejected	Went to Daniel's office to attempt to re-register and was given Section 28 to read and interpret. On 6/13/63 Daniel advised that he failed.

[fol. 1831]

33186	Early 6/1962 Rejected	Went alone to registration office to re-register. Daniel got some papers, asked applicant if he was honest, paid his debts, had ever been in jail. Daniel asked him questions and filled out a form. Daniel required him to read aloud and interpret orally a section of the Mississippi Constitution from a paper. Daniel held paper on counter near which Holloway was standing. Daniel said he didn't quite make it, and he should come back. Holloway left.
33118	10/22/62 Accepted	Went to regstration office to re-register. Daniel showed her section of Constitution in a book and asked if she could explain it. She said yes. She read it aloud and explained it. She registered.
33011	12/18/62 Rejected	Went to registration office to re-register. Received section 50 to read and interpret. Was advised by letter dated 1/28/63 that he failed.
33042	12/28/62 Rejected	Went to Daniel's office to attempt to re-register and was given section 15 to read and interpret. Daniel advised on 1/28/63 that he had failed.
33047	About Winter 1962-63 Rejected	Went to registration office. Received section 23 of Constitution to read and interpret. He tried to read it. Then Daniel read it to him and asked him to interpret orally. Was later notified that he did not pass.
33103	1/63 Rejected	Went to Daniel's office with his son to attempt to re-register and was given a section from the Constitution to read and interpret. It is not known if he was rejected.

[fol. 1832]

33067	1/1963 Rejected	Went to Daniel's office to re-register and was asked to read and interpret a section. On 4/10/63 she had not yet been advised as to her success.
33094	1/63 Rejected	Went to re-register at Daniel's office and was given section 25 to read and interpret. Daniel advised on 2/21/63 that he failed.
33101	Rejected	Went to Daniel's office to attempt to re-register and was given section 123 to read and interpret. On 2/14/63 Daniel advised that he failed.
33071	1/2/63 Rejected	Went to re-register at Daniel's office and was given section 119 to read and interpret. On 2/14/63 Daniel advised he had failed.
33035	1/9/63 Rejected	Went to Daniel's office and attempted to re-register. Daniel had her read and interpret section 29 of the Constitution. Daniel advised her on 2/7/63 that she had failed.
33079	1/11/63 Rejected	Went with wife to registration office to re-register. Daniel scattered out eight or ten tickets and he picked no. 12. Daniel got a slip of paper. Applicant read it aloud and interpreted it orally. He received notice dated 2/7/63 that he did not pass. On Saturday, probably 2/9/63, he went to Daniel's office to try again. Daniel would not let him try again because he said he was going to send him a notice. On Monday, probably

[fol. 1833]

		2/11/63, the day Laird received the notice, he went to the Circuit Clerk's office alone. He asked where the Election Commissioner's office was. Daniel asked if he wanted to go to the law with him. Laird replied "No, I just want to register." Daniel said, "Well, fill out the blanks, I'll go to the law with you." Because of this conversation with Daniel, and because of the advise of another Negro that he should stay away from B. C. Clark, one of the commissioners, he decided not to appeal.
33051	1/18/63 Rejected	Went to Daniel's office to re-register and was given section 75 to read and interpret. On 2/14/63 Daniel advised he had failed. Went to hearing on appeal 3/21/63 even though he was sick. B. C. Clark, Henry Baker, Daniel and another white man were there. Asked if he had been studying he said no. Clark said "You just have to know that Constitution. We're just doing our job." Clark said he could come back another day with the same chance he had then. Clark said his wife could come another day also. On 4/9/63 Hartzog saw B. C. Clark in town, asked if he had to come on a special day. Clark said any day, but since Clark was sick. Hartzog should see Daniel.
33052	1/18/63 Rejected	Went to Daniel's office to attempt to re-register. Daniel had him read and interpret section 80. Daniel advised him on 2/14/63 that he failed.
[fol. 1834]		Hearing on appeal set for 3/21/63 B. C. Clark told husband, they could

		come back another day instead, since husband was sick and they hadn't studied Constitution.
33147	1/19/63 Rejected	Went to Daniel's office to re-register and was given section 84 to read and interpret. On 2/14/63 Daniel advised he had failed.
33146	1/19/63 Rejected	Went to attempt to re-register at Daniel's office and was given section 80 to read and interpret. On 2/14/63 Daniel advised she had failed.
33050	1/22/63 Rejected	Went to re-register. Received section 73 to read and interpret orally. Advised by letter dated 2/14/63 that he failed.
33061	1/22/63 Rejected	Went to Daniel's office to attempt to re-register. Daniel had him read and interpret section 101. Daniel advised him on 2/14/63 that he failed.
33151	1/22/63 Rejected	Went to re-register with her daughter, was asked her precinct, then drew number 13. She read and interpreted the section but Daniel failed to register her.
33025	1/28/63 Rejected	Went to Daniel's office to re-register and was given section 30 to read and interpret. On 2/21/63 Daniel advised that he had failed.
33031	1/28/63 Accepted	Went to register with her son in Daniel's office. She selected a card, and read it outloud to him and interpreted it. She was required to explain what each word meant, such as "legislative," "judicial," and "executive." Received notice by mail that she passed.

33059	1/30/63 Rejected	Went to Daniel's office to re-register and was given Section 63 to read and interpret. On 2/28/63 Daniel advised that he did not pass the test.

[fol. 1837]

33156	1/30/63 Rejected	Went to Daniel's office to attempt to re-register and was given Section 5 to read and interpret. On 2/28/63 Daniel advised that he failed.
33083	1/31/63 Rejected Accepted on Appeal	Went to Daniel's office to attempt to re-register. Daniel gave him Section 8 to read and interpret. On 2/28/63 Daniel advised him that he failed. Appealed. Hearing 3/20/63 before Daniel, B. C. Clark, Henry Baker, and a white man he did not know. Was required to copy and interpret in writing a section of the Constitution which they picked. All looked at it. Daniel said he had improved on Constitution since he had last tried to register. All four agreed he passed. Daniel said he would send him notice when to come to register. On 4/10/63 notice had not yet arrived.
33109	1/31/63 Rejected	Went to re-register at Daniel's office and was given Section 73 to read and interpret. On 2/28/63 Daniel advised that he failed.
33136	1/31/63 Rejected	Went to Daniel's office to attempt to re-register and was given Section 25 to read and interpret. On 2/28/63 Daniel advised that he failed.

33058	2/1963	Went to registration office to re-register. After checking to see if he had been registered previously Daniel had him read and then asked if he would interpret a section of the Constitution. Mr. Holloway said, "I can't, not right now. I'll have to come back." He had already finished the reading part of the exam. As of 4/12/63 Mr. Holloway had not received anything in written from Daniel. He is not listed among the first 92 rejected applicants.

[fol. 1838]

33097	2/1963 Rejected	Went to Daniel's office to re-register and was given Section 6 to read and interpret. Daniel advised that he failed 3/29/63.
33087	2/1963 Rejected	Went to registration office. Received Section 5 to read and interpret orally. Was notified in March that she failed.
33089	Rejected	Went to Daniel's office to re-register and was given section 86 to read and interpret. Daniel advised on 3/14/63 that he failed.
33088	2/1963 Rejected	Went to Daniel's office to re-register and was given Section 29 to read and interpret. A 2/21/63 Daniel advised that he had failed.
33138	2/1963 Rejected	Went to Daniel's office to attempt to re-register and was given Section 156 to read and interpret. On 2/14/63 Daniel advised he failed.
33157	2/6/63 Rejected	Went to Daniel's office to attempt to re-register and was given Section 101 to read and interpret. On 3/7/63 Daniel advised that he failed.

33018	2/7/63 Rejected	Went to Daniel's office to attempt to re-register and was given Section 104 to read and interpret. On 3/7/63 Daniel advised that he had failed.
33141	2/7/63 Rejected	Went to Daniel's office to attempt to re-register and was given Section 157 to read and interpret. On 3/7/63 Daniel advised that he had failed.

[fol. 1839]

33090	2/15/63 Rejected	Went to re-register at Daniel's office and was given Section 104 to read and interpret. On 3/14/63 Daniel advised her that she failed.
33151	After 2/17/63 Regs'd. after Appeal	Attempted to re-register again after 2/17 and was asked to read and interpret. Received rejection notice and appealed. On appeal she read for three men, one being a B. C. Clark. The latter said she had read well and told Daniel "these people will make no trouble." She signed the registration book. She told us the word "alien" was in the section she had to read.
33085	2/18/63 Rejected	Went to Daniel's office to attempt to register. Daniel gave him Section 167 to read and interpret. On 3/14/63 Daniel advised him that he failed.
33104	2/18/63 Rejected	Went to Daniel's office to attempt to re-register and was given Section 156 to read and interpret. On 3/14/63 Daniel advised that he failed.

33072	2/20/63 Rejected	Went to Daniel's office to attempt to re-register. Daniel had her read and interpret Section 5. Daniel advised her on 3/21/63 that she failed.
33006	2/26/63 Rejected	Went to Daniel's office to attempt registration. Daniel had him read and orally interpret Section 1 of the Constitution. Daniel advised him on 3/29/63 that he failed because he was unable to read.
33095	2/26/63 Rejected	Went to re-register at Daniel's office and was given Section 28 to read and interpret. Daniel advised her on 3/21/63 that she failed.

[fol. 1840] C

The fellowing Negro citizens of Jefferson Davis County were denied voter registration on the basis of moral character. The official in all instances was Circuit Clerk James Daniel. The events set forth took place in the office of the Circuit Clerk, Prentiss, Mississippi.

33096	1961 Rejected Daniel-R	Went to registration office to re-register. Daniel told him laws had been passed that people could not register who had violated any laws concerning drunkenness or robbery or stealing anything. Daniel said applicant had taken wood from the school house. Applicant said he had been accused of that, but it had been cleared up and never was tried in court. The Judge had required him to pay $9.00 for "his writing and the deputy's collection." Daniel would not give him a test, but said he was not supposed to register him.

33001	1-10-63 Rejected Daniel	Went to Daniel's office to re-register and was advised on 2-7-63 that his application to register to vote was challenged under the good moral character law. Daniel advised the District Court that Armstrong was a "notorious bootlegger and law breaker" and that Armstrong had not contested the challenge made in accordance with House Bill 899.
33106	1-10-63 Rejected Daniel	Went to re-register at Daniel's office. Received application form and sec 104 to copy and interpret in writing. Answered question #16 "no" when he had allegedly been convicted once for the "sale of intoxicating liquors." Advised by letter dated 2-17-63 that he failed. Filed appeal & went to hearing before Board of Election Commissioners, including B. C. Clark & 2 white men. Daniel was there & mentioned his convictions & asked if he was member of NAACP. Was not given any new test. Appeal unsuccessful.

[fol. 1841]

33053	1-28-63 Rejected Daniel	Went alone to attempt to re-registration at Daniel's office. Daniel rejected him on the basis of moral character, stating to the District Court that, Hooker had been bootlegging for several years and had not contested the affidavit filed against him.

D

The following instances have occurred of Negro citizens of Jefferson Davis County, Mississippi, being deterred from attempting voter registration. These events took place in the county.

33014	Prior to April, 1961 Deterred Daniel	Did not attempt to take test because he heard from Negro neighbors of the difficulty in passing the test. These neighbors were Gaston Holloway and James Hartzog.
33027	1961-62 Deterred	On Thursday, 12-21-61, a news story appeared on the front page of the *Prentiss Headlight*, which listed 41 Negroes who were named as complainants of racial discrimination in voter registration in the Amended Complaint in the case of *U.S.* v. *Daniel*. The list included the names or the names of husbands of six full time teachers who taught in Jefferson Davis County. In April, 1962, these six teachers were notified directly or indirectly that they had not been recommended to be rehired for the following school year. These were: L. W. Easterling, Eva A. Easterling, Mabel Walker Armstrong, Mrs. Otis Cornelius Payne, Mrs. Wardell Gray, and Edna McCleod. Justice Department attorneys and FBI agents immediately investigated the situation. After this investigation had begun, four of these teachers were belatedly recommended to be rehired. Mr. and Mrs. Easterling, however, were not rehired. Mr. Easterling knew of no reason why his contract was not renewed except that his name had appeared in local paper in connection with *U.S.* v. *Daniel*. He thought that his not being rehired would deter other Negroes, especially teachers, from attempting to vote.

[fol. 1842]

33098	After 4-30-62 Deterred Daniel	After she and nine other Negroes attempted to register on April 4, 1962, Mrs. Frankie Moore said she did not return because some had been asked to memorize the Constitution.
33107	April, 1963 Deterred	She said that she and other Negroes in the Oakvale section of Jefferson Davis County saw no point in attempting registration when Charlie Griggs, also an Oakvale Negro, who had two years of college, had tried more than once and had been rejected each time.

[fol. 1843] E

The following Negro citizens of Jefferson Davis County were denied the opportunity to apply for voter registration in that county. All such denials took place at the office of the Circuit Clerk, Prentiss, Mississippi.

33154	1/1957 Daniel-R Refused	Went alone to try to re-register but Daniel told him that he had something else to do.
33154	1/1957 Daniel-R Refused	Went to Daniel's office to re-register and was told that he was not qualified and was not given any test.
33010	Spring 1958 Daniel-R Refused	Went to re-register with another Negro at Daniel's office. Daniel told them he was out of forms and that he could not register.
33062	About 1958 Daniel-R Refused	Went with husband to registration office. Daniel told husband he couldn't register. Husband said, "Why, Mr. Daniel, I can't register and I have been living right here all my life?" Mrs. Herron did not hear Daniel say anything else, and did not speak herself. They left.

33147	1958 Daniel-R Refused	Went with Fred Ross and Y. C. White to re-register. Daniel said that he had been in court (Darby v. Daniel), and that they should come back in about two weeks. He said he did not have time to register them.
33149	1958 Daniel-R Refused	Went with husband to re-register, but Daniel said he was too busy.
33032	1959 Mrs. Daniel-D.C. Refused	Went with Scott Barnes to Daniel's office to attempt to re-register. Mrs. Daniel was there and told them Daniel takes care of the registration and that he was out. They then left the office.
33032	1959(?) Daniel-R Refused	Went with Gabe Terrell to Daniel's office to attempt to re-register and was told by Daniel that he did not have time to take care of them.
33026	Spring, 1959 Daniel-R Refused	Went to registration office to re-register. Daniel said he had work to do, and that there was no need for her to come back since she would not be eligible to vote in the election. She understood him to mean the general election coming Nov. 4, 1959. She did not return.

[fol. 1844]

33065	Jan. 1959 or 1960 Daniel-R Refused	Went to registration office with wife, Genora Holloway, in latter part of January. Said they came to see if they could put their names back on the book. Daniel said it was 11:40 a.m., and asked them to return another day. They left.

33065	Jan. 1959 or 1960 Woman & 2 men Refused	Went to registration office to reregister with wife (Genora Holloway), and John Barnes. Told lady in office, believed to be Mrs. Daniel, that they had come to register. Lady said Daniel was sick. Returned following day with wife, but not Barnes. Daniel's private office was closed, but two men sitting in the lobby part said Daniel was still sick.
33140	2/1959 Daniel-R Refused	Went with John Goodloe to Daniel's office. He told them he was too busy to register them. They left.
33064	Jan. 1959 or 1960 Daniel-R Refused	Went to Daniel's office with husband in latter part of January. Husband said they came to see if they could put their names back on the book. Daniel said it was 11:40 a.m. and asked them to return another day. They left.
33064	Jan. 1959 or 1960 Woman & 2 men Refused	Went to registration office to re-register with husband (Gaston Holloway), and John Barnes. Husband told lady in office, believed to be Mrs. Daniel, that they had come to register. Lady said Daniel was sick. Returned following day with husband, but not Barnes. Daniel's private office was closed, but two men sitting in the lobby part said Daniel was still sick.
33148	2/1959 and 3/1960 Mrs. Daniel-D.C. Refused	Went in Feb. 1959 with wife to Daniel's office but the registrar was not there. The same happened again in March 1960. Both times Mrs. Daniel met them.
33030	9/1960 Daniel-R Refused	Went alone to Daniel's office to attempt to re-register. There were several other Negroes in the office and Daniel told them to "get out". He left.

33139	9/1960 Daniel-R Refused	Went with Fred Ross to attempt to register and Daniel told them he didn't have time right then—and that they'd have to come back.

[fol. 1845]

33140	10/1960(?) Mrs. Daniel- D.C. Refused	Went with John Goodloe to Daniel's office to attempt to re-register and was told by Mrs. Daniel that her husband was ill. They then left.
33057	About 11/1960 Man Refused	Went to registration office to try to re-register. A group of white men were sitting outside the office. When she said she wanted to see Daniel, they said he was ill and not in the office. They continued to talk among themselves, and she left.
33030	1/1961 Daniel-R Refused	Went to Daniel's office to attempt to re-register at about 11:00 a.m. Daniel told him he was leaving for lunch. He left and returned at 1:00 p.m. but Daniel was still gone.
33048	1961 Daniel-R Refused	Went with wife to registration office. Daniel said they could not register until court is over. They left.
33062	1961 Daniel-R Refused	Went with husband to registration office. Daniel told husband he couldn't register. Husband asked why. Mrs. Herron does not know what Daniel answered. They were not permitted to register. Daniel said, "Well, you all will have to go through a process of law and that will be in Jackson, Mississippi."

33065	8/17/61 Daniel-R Refused	Went with wife, Genora Holloway, to registration office, which was locked. When asked, someone in the hall said he thought Daniel had gone down the street to get coffee. They left. Returned with wife on Aug. 20, 1961, and said they wanted to re-register. Daniel said court was going on, and his books were "all fumbled," but they could come back another day.
33064	8/17/61 Daniel-R Refused	On Aug. 17, went with husband, Gaston Holloway, to registration office, which was locked. When asked, someone in the hall said he thought he had gone down the street to get coffee. They left. Returned with husband on Aug. 20, 1961, and husband said they wanted to re-register. Daniel said court was going on, and his books were "all fumbled," but they could come back another day.

[fol. 1846]

33147	8/21/61 Daniel-R Refused	Went with his wife to the registration office to re-register. The door was closed but not locked; they opened it and entered. Daniel, a white woman believed to be Mrs. Daniel, and a man Ward thought was a lawyer were in that office. When told the Wards wanted to register, the white woman said "you'll have to come back in two weeks. Mr. Daniel will be in court for two weeks." Mr. Daniel walked past them out of the office. They left.
33146	8/21/61 Daniel-R Refused	Went to registration office with her husband to attempt to re-register. Found the door closed but not locked. They opened the door; Mr. Daniel was in the office with a white woman, believed to be Mrs. Daniel, and a white man who seemed to be a lawyer.

When the white woman asked what they wanted, they said they wanted to register. She said Mr. Daniel was in court and would be for the next two weeks. While they were talking to the white woman, Mr. Daniel went past them out of the office. They left.

33112	1/29/62 Daniel-R Refused	Went with wife to registration office to re-register. Daniel went into another room, came back and said, "You are a complainant in this case against me." Applicant said, "I don't know, maybe so." Daniel said he should wait until after the trial. Wife said they had paid their poll tax. He said paying poll tax has a deadline registration has none. She said then they could register then. He said no, wait until after trial.
33111	1/29/62 Daniel-R Refused	Went with husband to re-register. Daniel said they would have to wait until after court because they were complainants.
33132	About 2/1962 Daniel-R Refused	Went alone to the registration office to re-register. Daniel would not allow Ross to apply. Daniel said he was in court.

[fol. 1847]

33146	3/15/62 Daniel-R Refused	Went with husband to registration office to attempt to re-register. Daniel asked if they were the complainers. They asked what he meant. He said, "You've got me sued, you'll have to wait till the Court is over."
33147	3/15/62 Daniel-R Refused	Went with his wife to try to re-register. Mr. Daniel told them they had sued him in court, and they could not try to register until after the court case.

[fol. 1848] Jefferson Davis Co. #70

F

The following Negro citizen of Jefferson Davis County was denied registration solely because he failed to sign the oath on his application form. This occurred in the office of the Circuit Clerk, Prentiss, Mississippi.

33076	6/22/62 Rejected Daniel-R	He went to registration office. Received application form and section 74 of the Constitution. Wrote excellent full page essay on duties and obligations of citizenship. Handed in form, asked if that was all, Clerk said "yes." Went in again the same day because he thought that his registration was not complete. When he asked, Clerk said that his name would first be published in the newspapers and then form would be graded. Returned the week of August 5, to ask if he had passed. Clerk looked at application about a second and wrote "failed" across the top. Daniel did not tell him why he he was failed. Daniel testified that he was rejected because he didn't sign oath.

[fol. 1849] Jefferson Davis Co. #70

G

The following Negro citizen of Jefferson Davis County was denied the right to pay poll tax in the County. This occurred at the County Courthouse, Prentiss, Mississippi.

33020	1/28/60 Not allowed to pay poll tax Sheriff Grubb	Darby had been plaintiff in voter registration case, *Darby* v. *Daniel* went to Courthouse to pay poll tax for himself and his wife. Even though he then had resided in Prentiss for the past twelve years, the sheriff said he did not know him and forced him to leave. He offered to identify him-

self by a white man who had known him a long time, and offered to show his 1959 poll tax receipt, but sheriff Grubb said he did not want to see him around, he should get out. Finally as Darby left, sheriff said, "I might sell you a poll tax later on, I might not."

[fol. 1850] Jefferson Davis Co. #70

H

The following Negro citizens of Jefferson Davis County who had been rejected for voter registration by Circuit Clerk James Daniel were also denied registration upon appeal by the County Board of Election Commissioners. All events took place in Prentiss, Mississippi.

33117	1/15/63 Rejected Daniel-R	Went to registration office to re-register. Daniel said his name had to appear in the paper twice before he could come back. Returned, pulled number, read and interpreted section 23. Daniel said he did not meet the qualifications. Received written notification that he failed, dated 2/7/63. Appealed, and on 3/22/63 met the Board of Elections including Mr. B. C. Clark, two other men, and Mr. Daniel. Clark asked him what had "enticed him to vote?" He was asked what he had been reading, whether he had been reading anything to learn to vote. Said no. Was given no test. Was told to go back to see registrar again.

33152	1/22/63 Daniel-R Rejected	23-year-old Jackson college graduate attempted to register on 1/22/63, filled out form but later she received a letter notifying her of her rejection and notifying her of possibilities of appeal. She appeared for her appeal but was told by Daniel that the others had told him to tell her that her interpretation was wrong. She left.
33033	1/28/63 Daniel-R Rejected	Went to registration office to re-register. Daniel had him real aloud and interpret section 29 of the constitution. Received notice dated 2/21/63 that he did not pass. He elected to appeal. Met with Election Commission, which included Mr. B. C. Clark and two white men whom he did not know. Mr. Daniel was also present. When asked, he said he had been registered before. One man asked if he had been studying up. Daniel said Gray had been in court twice and had tried to force his name back on the books through the court. Gray said he did not try to force his way anywhere but was subpoenaed to court just like any other citiezn. Mr. Clark gave him Section 161, a difficult section, to read. He read it, and Mr. Clark said one word was not clear. He was not asked to interpret the section. The session ended. His appeal was dismissed.

[fol. 1851]

33167	4/23/63 Rejected Daniel-R	Went down to register and was given Section 63 to interpret. One month later received notice of rejection by mail and an appeal form. She appealed and went before the Board of Election Commissioners. She was asked if she had been studying; she replied yes. She was then asked if

		she "knew more now than the last time" she replied she didn't know. One of the white men present then, said she should know whether she knows more, and that it was out of their hands now. She was told that she was failed and that she should see an attorney.
33168	4/30/63 Rejected Daniel-R	Went down to register and was given Section 80 to interpret. Was notified of rejection about one month later. She appealed to the Board of Election Commissioners. She appeared before the board and was asked whether she had studied since she had failed. She replied "no" and was told she was supposed to have studied. Was also asked by one of the white men present "if you haven't studied why are you back? There is no need to give you another test." The white man then said "I'm not supposed to do this," and gave her something to read. She read and was asked to interpret, she did, and was told "you shore failed." She was then told she could go see a lawyer and that one of them would send her the name of one. This information she never received.

[fol. 1852] Jefferson Davis County #70

Part II

Application Forms

1. Number of Application Forms

A re-registration of all voters was begun in Jeff Davis County on February 8, 1956. Prior to the re-registration, over 1200 Negroes were registered to vote in Jeff Davis County. In July, 1958, the case of *Darby* v. *Daniel*, a private suit against the registrar who had taken office in January, 1956, was tried. On August 3, 1961, the government filed a complaint against Mr. Daniel and made a motion under Rule 34 F.R.C.P. for inspection of the voting records. On June 28, 1952, the government was permitted to inspect the records at which time there were only 13 application forms, the first dated April 30, 1962—all forms prior to this date were destroyed. A motion for inspection of record under Rule 34 F.R.C.P. was served on Daniel in August 1961 in connection with the case of *U. S.* v. *Daniel*. Copies of one volume of 78 forms of white persons and 13 forms of Negroes were introduced into evidence in the case of *Darby* v. *Daniel*. These forms are still in the District Court files of the Southern district of Mississippi.

2. Period which forms cover

There were 23 volumes of forms or about 2500 forms in existence in July, 1958. One volume of 78 forms, all dated in 1956, were introduced into evidence in *Darby* v. *Daniel*. [fol. 1853] The forms were put in the volumes at random and thus this volume of 78 forms is representative of the 2500 forms which were destroyed. All of these 78 forms were filed by white persons. The 13 Negro forms cover the period from March 31, 1956—February 20, 1958.

3. Analysis of the 78 forms of white persons and 10 forms of Negroes introduced into evidence in *Darby* v. *Daniel*.

(a) Selection Discrimination

From February 1956 to October 1956, James Daniel required all applicants to complete a sworn written application. He made no differentiation between appli-

cants previously registered to vote in Jefferson Davis County and applicants registering for the first time in that county. During this period, Daniel selected easier sections of the Mississippi Constitution for white applicans to interpret than he did for Negro applicants.

(1) 62 of the 78 white applicants received Section 30 of the Mississippi Constitution to write and interpret. It reads:

> There shall be no imprisonment for debt.

(2) 13 of the 78 white applicants received Section 207 to write and interpret. It reads:

> Separate schools shall be maintained for the white and colored races.

[fol. 1854] (3) The remaining 3 white applicants of the 78 received Sections 32, 198, and 265.

(4) The 13 Negroes, copies of whose application forms are still in existence, received Sections 16, 21, 23, 32, 61, 86, 108, 123, 146, 198 to write and interpret. They are:

John H. Lewis—3-31-56

Section 16

> Ex post facto laws, or laws impairing the obligation of contracts, shall not be passed.

L. W. Easterling—4-6-56

Section 21

> The privilege of the writ of habeas corpus shall not be suspended, unless when in the case of rebellion or invasion, the public safety may require it, nor ever without the authority of the legislature.

James H. Armstrong—4-2-56

Section 23

> The people shall be secure in their persons, houses, and possessions, from unreasonable seizure or search; and no warrant shall be

issued without probable cause, supported by oath or affirmation, specially designating the place to be searched and the person or thing to be seized.

[fol. 1855] Flora W. Haynes—4-4-56

Genora Holloway—2-20-58

Section 32

The enumeration of rights in this constitution shall not be construed to deny and impair others retained by, and inherent, in the people.

Dudley Hawthorne—4-11-56

Section 61

No law shall be revived or amended by reference to its title only, but the section or sections, as amended or revived, shall be inserted at length.

John H. Williams—5-24-56

Section 86

It shall be the duty of the legislature to provide by law for the treatment and care of the insane; and the legislature may provide for the care of the indigent sick in the hospitals in the state.

John Barnes—

Section 108

Whenever the legislature shall take away the duties pertaining to any office, then the salary of the officer shall cease.

Gaston Holloway—2-20-58
Henderson Darby—6-24-56

Section 123

The governor shall see that the laws are faithfully executed.

[fol. 1856] Ernest L. Lockhart—5-14-56

Section 146

The Supreme Court shall have such jurisdiction as properly belongs to a court of appeals.

Eva Easterling—4-6-56
Johnie B. Darby—6-22-57

Section 198

The legislature shall enact laws to prevent all trusts, combinations, contracts, and agreements inimical to the public welfare.

(5) No Negro applicant during this period received Section 30 or Section 207 to write and interpret.

(b) Assistance to write persons

From February, 1956 through October 12, 1956, defendant Daniel used the application form to register white applicants and reject Negro applicants on account of their race. White applicants were given assistance in completing the application form and in interpreting a section of the Mississippi Constitution and in giving a statement of the duties and obligations of citizenship; Negro applicants were refused assistance.

Four of the 78 forms of these white persons were filled out entirely by James Daniel.

[fol. 1857] (1) James Daniel filled out the application form for Mrs. Carl Stephens, Sr., white, on April 25, 1956. The statement of duties and obligations in Question 20 is:

Abide by all laws of the state and nation—Exercise the right to vote—a person should be willing to serve the public in any place for the benefit of the general public.

(2) 41 of the 78 applicants (copies of whose forms are still in existence) wrote standard answers for Question 20—the duties and obligations of citizenship question. Each of these 41 answers contains

the following thoughts all of which are contained in the form of Mrs. Stephens filled out by Daniel:

> Abide—laws—state—nation—enjoy (or exercise) the right to vote or enjoy the privilege of voting.

(3) Nineteen of the 62 white applicants (whose forms are still in existence) who received Section 30 gave verbatim interpretations of Section 30 in answer to Question 19 at well as verbatim statements of the duties and obligations of citizenship in answer to Question 20. Their verbatim answers are:

> Question 19—"No person can be imprisoned for a debt."
>
> Question 20—"To abide by all state and national laws. To enjoy the right to vote."

[fol. 1858] Four other white applicants gave the standard interpretation of Section 30 except for omission of the word "a" between "for" and "debt":

> Question 19—"No person can be imprisoned for debt."

Each also gave verbatim the standard answer for Question 20:

> Question 20—"To abide by all state and national laws. To enjoy the right to vote."

(5) Two white applicants, on April 24, 1956, gave as their interpretations of Section 207:

> There will be separate schools for the races in Mississippi.
> There will be separated schools for races in Mississippi.

The applicants wrote for Question 20:

> Abide by all laws of the Constitution and exercise the right to vote.
> Abide by all laws of the Constitution and exercise right to vote.

(6) Two white applicants receiving Section 207 on April 13, 1956, to interpret gave as their interpretations:

> There will be no mixing of the races in school in Mississippi.
> There will be no mixing of the races in schools.

[fol. 1859] (7) The application forms of the 10 Negro applicants contain no standard answers for Question 20.

C. Grading

James Daniel did not grade the interpretations of white applicants, but did grade and reject Negro applicants for their interpretations.

(1) Two of the 13 white applicants who received Sec. 207 merely re-copied verbatim Section 207 as their interpretation.

(2) Zelus Paine Polk, white State Representative for Jefferson Davis County, (one of the three persons of the 78 who was not given Sec. 30 or Sec. 207) and Eva Easterling, a Negro school teacher, were both given Section 198 to interpret. Section 198 reads:

> The legislature shall enact laws to prevent all trusts, combinations, contracts and agreements inimical to the public welfare.

Zelus Paine Polk was registered by James Daniel on April 30, 1956. His interpretation was:

> It is the duties of the legislature to see that the well fair of its citizens is Protected against acts of Violence and disturbances and all acts that would lead to it's over throw. Safe guard the country and its Constitution.

[fol. 1860] Eva Easterling was rejected by James Daniel on April 6, 1956. Her interpretation was:

> The legislature shall pass laws to protect all Trusts, Combinations, Contracts, and agree-

ments that are worthwhile for the people welfare. The legislature passed these laws to protect the people that live as citizen of the State.

(3) Parkman A. Fortenberry, white, and Genora Holloway, a Negro with two years college education were both given Section 32 to interpret. It reads:

> The enumeration of rights in this Constitution shall not be construed to deny and impair others retained by and inherent in the people.

Parkman A. Fortenberry was registered by James Daniel on April 27, 1956. His interpretation was:

> The Constitution is so written that it cannot be changed and that the people make up the rights and no one can change them so as to protect any and all concerned.

Genora Holloway was rejected by James Daniel on February 20, 1958 on the basis of her interpretation. Her interpretation was:

> The enumeration of rights in this Constitution should not be changed to deny any law-abiding citizen of his civil rights, in his county nor state.

[fol. 1861] (4) Jeffie Garner Smith, white, was registered by James Daniel on July 7, 1956. He was given Section 30 to interpret which reads:

> There shall be no imprisonment for debt.

His interpretation was:

> Without due process of time and law.

[fol. 1862] Lamar #72

Part II

Application Forms

1&2. Number of Application Forms

Period includes forms from 7/18/60 to 7/5/63.

White

Accepted	461
Rejected	2

No Negro forms

3. Analysis of Forms

a. Selection of Constitutional Sections—

Section	No. of applicants
30	117
14	67
240	229
265	20
8	10
164	1
143	1
16	5

b. Assistance to White Applicants—

An analysis of the application form shows numerous verbatim or almost verbatim answers to Question 19 (interpretation) and Question 20 (duties and obligations of citizenship).

(1) Forms with verbatim or almost identical answers to Questions 19 and 20.

Section 14

Section 14 of the Mississippi Constitution states:

> No person shall be deprived of life, liberty, or property except by due process of law.

[fol. 1863] The following 47 white registrants wrote (or attempted to write) the following statement as their interpretation:

> State as Federal Government is without power to deprive a person of life, liberty, or property by an act which has no reasonable relation to any proper Governmental purpose.

Each applicant, with only minor variations, also wrote in answer to question 20:

> Obey the law and respect the rights of others.

Date of Application	Name
7-18-60	Myatt, Jean Ellen
12-27-60	Tharp, Juanita G.
12-27-60	Dean, Mary Ann T.
1-23-61	Morgan, Bruce
1-24-61	Riley, Ora Ray
1-25-61	Walker, Eva Jo
1-26-61	Swan, Thomas D.
1-26-61	Ladner, Vernon M.
1-27-61	Walker, Caludia C.
1-30-61	Eubank, David Truman
1-30-61	Young, Louella
1-30-61	Hall, Mary A. S.
3-9 -61	Burge, Aubrey Eugene
10-31-61	Henderson, Martha Nell
1-4 -62	Moore, Helen Mrs.
1-4 -62	Bond, Reginald B.
1-4 -62	Baker, Charlene Mrs.
1-6 -62	Stephens, Troy Wayne Mrs.
1-16-62	Simmons, Jewel
1-22-62	Herrin, Annie V.
1-25-62	Bond, Reginald B. Mrs.
1-25-62	Jones, James Joseph
1-26-62	Price, Joe R.
1-26-62	Brice, Joe B.
1-26-62	Eubanks, Michael Ray

[fol. 1864]

Date of Application	Name
1-26-62	Johnson, James O.
1-27-62	Hartfield, Braxton
1-30-62	Parker, George M.
1-30-62	Bond, David
1-30-62	Dickinson, Grady Frances
1-30-62	Piercy, J. V.
1-31-62	Morgan, Ivory C.
1-31-62	Evans, Kendall
1-31-62	Murphy, Mildred
1-31-62	Anderson, Jessie Marie
1-31-62	Hatfield, Marie
2-1 -62	Slade, Sidney Calvin
3-27-62	McCraney, W. R.
3-27-62	McRaney, R. Mrs.
5-4 -62	Shoemaker, Letha
5-14-62	Stuart, James Hugh
5-15-62	Wilson, Anita N.
6-17-62	Stratton, Joseph S.
8-10-62	Davis, Vera C.
8-21-62	Clinton, Jo Ann B.
9-6 -62	Casonova, L. J.
9-18-62	Graham, Richard G.

(2) The following groups of registrants wrote verbatim or substantially similar answers to both questions 19 and 20.

Section 240

"All elections by the people shall be by ballot"

Group I (22 Registrants)

Date of Registration	Name	Q19. & Q20.
2-1-62	Hartfield, Jo Ann	Q19. Will vote my ballot by secret Q20. Abey laws by state
10-23-62	Stafford, Melvin	Q19. All public voting shall be in secrecy to the voter. Q20. Obey The laws

Date of Registration	Name	Q19. & Q20.
[fol. 1865]		
11-20-62	Clinton, Glyn E.	Q19. All persons voting is done by secret ballot Q20. bey the laws
1-4-63	Haddox, Ray	Q19. Ever person cast a secret ballot Q20. Obey the laws
1-10-63	Swann, Carolyn D.	Q19. Vote by secret ballot Q20. Obey the laws of the state.
1-22-63	Smith, Brenda H.	Q19. To vote by secret ballot. Q20. To obey the laws of the state.
1-22-63	Bynun, Rankin G.	Q19. Vote by secret ballot Q20. Obey the laws of the State.
1-23-63	Chambers, Albert D.	Q19. vote by secret Q20. obay the laws of the state.
1-28-63	Courtney, Alice E.	Q19. All people vote by secret Q20. Obey the law by the State.
1-30-63	Bodin, Janice L.	Q19. I shall the the right to vote secret Q20. Obey the laws of Mississippi
1-30-63	Parker, James Wayne	Q19. Vote should be cast by secret ballot. Q20. You should obey the laws of the United States.
fol. 1866]		
1-30-63	Entrekin, Ronald Mrs.	Q19. Vote by the secret ballot when I go in booth. Q20. Obey the laws of the State.
1-31-63	Rutland, Winnie A.	Q19. Enter the booth and vote by secret Q20. Obey all the laws.
1-31-63	Bassar, Lila H.	Q19. By secret Q20. Obey the laws
2-1-63	Cooper, Jasper A.	Q19. Will vote my ticket by secret Q20. Obey the laws of the state

Date of Registration	Name	Q19. & Q20.
2-1-63	Harrington, Perry Lee	Q19. In order to elect some one a secret ballot must be cast. Q20. Obey all laws of the state.
2-4-63	Pittman, Martha Earline	Q19. all ballot shall be by secret Q20. Obet the laws od the state
2-4-63	McCray, Bernice A.	Q19. Vot my ballot by secret. Q20. Obey the laws of the State.
2-13-63	Gipson, James B.	Q19. All elections shall be by secret. Q20. Obey the laws ef state.
[fol. 1867]		
4-8-63	Sistimk, Norma Jean	Q19. election shall be by ballot and secret. Q20. obey the law of the constitution
4-13-63	McMahon, Winston	Q19. You go in a booth to cast secret ballot Q20. Obey the laws of the land.
5-8-63	Lott, Isabell B.	Q19. I will vote ballot by secret Q20. Obey the law of the state
Group 2 (2 registrants)		
1-4-63	Dearman, Doris C.	Q19. To lawfully vote, it must be by ballot Q20. under a constitutional form of government you are assured of protection by the law officials and the right to vote.
1-7-63	Gates, Franklin D.	Q19. To lawfully vote it must be by ballot Q20. Under a constitutional form of government you are assured of protection by the law officials and b the right to vote.

[fol. 1868]

Group 3 (2 registrants)

Date of Registration	Name	Q19. & Q20.
5-25-63	Piercy, Doris	Q19. Elections without ballot is unlawful. Q20. Uphold the law of the State Pay your taxes
5-25-63	Piercy, Danny Joe	Q19. An election without ballot is not lawful. Q20. Pay ypur taxes Up Hold the Law of your state.

Group 4 (2 registrants)

4-27-63	Broome, Duthel D.	Q19. All election must be held with ballot Q20. All laws must be obayed
4-27-63	Broome, Kermit S.	Q19. All election must be held with Ballot Q20. All laws must be obayed

Group 5 (2 registrants)

1-29-63	Ourstrat, Mary M.	Q19. People Elect all Canad tes by Votes & Ballots Q20. A Citizne has to pay poll tax and register each year.

[fol. 1869]

1-29-63	Owenstreet, William Carl	Q19. people elect all candiat by vote and ballot. Q20. A citian has to pay poll tax and register each year.

Group 6 (11 registrants)

In this group in answer to Question 19 the element of voting as one pleases appears in all of the forms. In answer to Question 20 all the applicants in this group have the element of obedience to law.

Date of Registration	Name	Q19. & Q20.
1-31-63	Blackwell, Mona Lee	Q19. It means that you vote by secret ballot so as to vote for whom you please without anyone knowing about it. Q20. To obey the laws of the state.

Date of Registration	Name	Q19. & Q20.
1-31-63	Lee, Marlyn	Q19. Everybody is given a secret ballot in order to vote like you please. Q20. Support the laws.
1-31-63	Keith, Frances E. P.	Q19. It means that you (the people) have a right to elect by votes the person who they want to. Q20. To obey the laws of the state
[fol. 1870]		
2-1-63	Bourn, Milton	Q19. All persons are given a ballot to vote for whom they please, without everyone else knowing who they voted for. Q20. Obey all laws of the state and country.
2-1-63	Bourn, Marilyn J. A.	Q19. Every body is given a ballot to vote secret to vote for whom they please. Q20. Obey all the laws of the State, & County.
2-6-63	Hartfield, Margaret L.	Q19. When I go in to vote I will vote in secret and vote for whom I please Q.20 That I will uphold the law
2-7-63	Couttry, John R.	Q19. When you vote by ballot you can vote like you please. Q20. Obey the laws of the state.
2-8-63	Riles, Roy James	Q19. Vote like you wont to & for whom you please. Q20. obey the laws.
2-26-63	Whiddon, Mrs. Wilborn E.	Q19. Have the write to vote for whim I want to. Q20. Obey the laws of the state.
5-4-63	Lee, Mrs. Marshall	Q19. I will vote how I want to for who I want to by secret. Q20. Obey the laws of the state

[fol. 1871]

Date of Registration	Name	Q19. & Q20.
5–8–63	Hatten, Joan	Q19. I am going in to vote for whom I please the best qualified and by secret Q20. I am suppose to obey the laws in the state.

Section 30

("There shall be no imprisonment for Debt.")

Group 1 (2 registrants)

Date of Registration	Name	Q19. & Q20.
1–12–63	McMahon, Horace Edgar	Q19. I shall not be sent to prison for the debts I make. Q20. I understand my duties as a citizen and the laws of the constitution that protect me.
1–12–63	McMousen, Curtis Everett	Q19. I shall not go to prison for a debt I make. Q20. I understnad my duties as a good citizen and laws of the constitution that protect me.

Group 2 (2 registrants)

12–27–62	Glasscock, James E.	Q19. Section 30 of the constitution of Mississippi states in effect, that no one shall be imprisoned (placed in jail or prison) because of amounts owed to another individual or individuals

[fol. 1872]

Q20. The citizen under a constitutional form of government has a basis duty to uphold the constitution as it is written. He also has subsidiary duties of participating in government by running forcoffice, voting and exhibiting

Date of Registration	Name	Q19. & Q20.
		and interest in his government and his country.
12-28-62	Howard, Robbie L.	Q19. Section 30 means that no one shall be put in jail because of amounts owed to other individual or individuals. Q20. The citizen under a contitutional form of government a? duty to uphold the constitution as it is written He also has subsidary duties of participating in government by running for office, voting and exhibiting an interest in his government and country
Group 3 (2 registrants)		
7-5-63	Ladner, James E.	Q19. there shall be no imprisonment for Debt. Q20. Obey the laws Pay your dept.
7-5-63	Ladner, Ray H.	Q19. there shall be no imprisonment for debt. Q20. obey the laws pay year debt
[fol. 1873]		
Group 4 (2 registrants)		
4-29-63	Breshears, Georgia L.	Q19. A debt is not a crime. Q20. Obey the law of the country.
4-29-63	Breshears, Thomas C.	Q19. A debt is not a crime Q20. Obay the laws of the contry

Section 14

("No person shall be deprived of life, liberty, or property except by due process of law.")

Group 1 (2 registrants)

Date of Registration	Name	Q19. & Q20.
6-1-63	Bramlett, Carlson E.	Q19. Anyone should have a fair trial, to be sure they are guility before they are punished Q20. Anyone should vote, abide by the laws of the country, and be a good citizen
6-1-63	Bramlett, Mrs. Berta F.	Q19. Anyone should have a fair trial. to be sure they are quility, before they are punished. Q20. Anyone should vote, abide by the laws of the country, and be a good citizen

[fol. 1874]

Section 16

("Ex post facto laws, or laws impairing the obligation of contracts, shall not be passed.")

Group 1 (2 registrants)

Date of Registration	Name	Q19. & Q20.
7-12-62	Davis, Roland W.	Q19. Vested rights cannot be distroyed by the legislature creating a new cause of action no can it destroy a valid contract. Q20. Obay the laws of our country and respect bthe rights of others.
7-20-62	Davis, Ethelyn K.	Q19. The legislature creating a new cause of action cannot destroy vested rights, nor can it destroy a valid contract. Q20. Respect the rights of others and obey the laws of our country.

(3) Forms with verbatim or almost identical answers to Question 19.

Section 14

The following four registrants interpreted §14 in substantially the same manner as the registrants listed above in 3(a)(b)(1).

[fol. 1875]

Date of Registration	Name
9-28-60	Lowe, James Alexander
1-26-61	Barrett, Ben Wesley
1-6-62	Deen, Hester E.
1-23-62	Goor, Eula

[fol. 1876] Section 30

("There shall be no imprisonment for Debt.")

Group 1 (11 registrants)

The following applicants interpreted the section to mean "Debts are not a crime" or used very similar language.

Date of Registration	Name	Q19. & Q20.
2-19-63	Lott, Richard Lamar	Q19. debts are not a crime Q20. have protection of law
2-23-63	Lott, Mary Ernestine	Q19. Debt is not a crime Q20. Support the Law
2-27-63	Graham, Billy R.	Q19. Debts is not a crime Q20. Obey the law
3-8-63	Green, Mary I.	Q19. Debt is no crime Q20. Obey the law
3-23-63	Dement, Edwin W.	Q19. Debth is no crime. Q20. Obay the laws and pay your taxes.
4-29-63	Breshears, Thomas C.	Q19. A debt is not a crime Q20. Obay the laws of the contry
4-29-63	Breshears, Georgia L.	Q19. A debt is not a crime Q20. Obey the law of the country
[fol. 1877]		
6-7-63	Slade, Brenda Joyce H.	Q19. Debts shall be no crime. Q20. To obey the law and and pay your taxes.

Date of Registration	Name	Q19. & Q20.
7-1-63	Patch, Jack M.	Q19. Debt isn't a crime. Q20. A person has the protection of the police & other law enforcement officers and should obey the laws od our state.
7-5-63	Bounds, Margaret Elaine	Q19. Debt is not a crime. Q20. Obey the laws of our government and our constitution.
7-1-63	Lucas, Patricia Irene	Q19. Debt is not a crime. Q20. Support the government by paying my taxes.

Group 2 (9 registrants)

The following nine applicants interpreted the section by stating: "Debts create no crime," or language similar thereto.

Date of Registration	Name	Q19, & Q20.
1-19-63	Overstrut, Earl Lavon	Q19. debts creat no crimes Q20. Obey all laws.
1-26-63	Dixon, James E.	Q19. It creats no crime Q20. To obey the laws of the State and United States.
[fol. 1878]		
1-31-63	Simmons, Gladys G.	Q19. Debts create no crime. Q20. To obey the laws.
2-9-63	Lundy, James H.	Q19. Debt create no crime. Q20. Bide by the law or laws.
2-21-63	Jones, Darlis	Q19. Debts do not create any crime. Q20. Support all laws.
3-18-63	Gore, Henry A.	Q19. Debts create no crime. Q20. Obey the laws.
3-25-62	Hartfield, G.W.	Q19. Debts create no crime Q20. uphold the law of the state.
6-28-63	Brun, Wayne P.	Q19. debts breat no crime Q20. to fallów & uphold the constitution.

Date of Registration	Name	Q19. & Q20.
6-28-63	Hartfield, Bonnie J.	Q19. Debts create no crime. Q20. You are entitled to the full protection of the laws. Yoa are free to worship as you choose you pay your taxes.

[fol. 1879] Section 240

("All elections by the people shall be by ballot.")

Group 1 (7 applicants)

The following applicants include in their interpretation a statement to the effect that "public elections" shall be "void" if not by ballot.

Date of Registration	Name	Q19. & Q20.
2-4-63	Miller, Charlene	Q19. My vote by ballot is secret Public Elections by the people shall be void if not Held by Ballot Q20. A citizen should support the laws and help willingly in the Financial support of a constitutional form of government in return for its political rights.
5-18-63	Overstreet, Mrs. William C. Jr.	Q19. Public electin shall be void if not held by ballot. Q20. Obey the laws of the State.
5-23-63	Robertson, Alice M.	Q19. Public election by the people shall be void if not held by ballot. Q20. Obey the laws of our government and our constitution.
[fol. 1880]		
6-17-63	Salter, Davis Earl	Q19. Public elections by the people shall be void if not held by ballot. Q20. It is the duty and obligations of a person to ballot in each election to maintain a constitutional form of government.

Date of Registration	Name	Q19. & Q20
6-20-63	Anderson, Roger D.	Q19. Public elections shall be void if not helt by ballot Q20. Obey the law of our State
6-21-63	Russell, Bobby T.	Q19. Public election by the people shall be void if not held by ballot. Q20. Obey the laws of our government.
6-26-63	Saucier, Marie H.	Q19. Public election by the people shall be void if not held by ballot. Q20. Obey the Laws of the State.

Group 2 (13 registrants)

The following applicants include in their interpretation the statement that if not by ballot an election would be "void."

[fol. 1881]

Date of Registration	Name
1-31-63	Howell, Sarah R. R.
4-23-63	Bond, Claude E. Jr.
6-21-63	Breazeale, N. A.
6-21-63	Smith, Mary Lou
6-25-63	Smith, Jimmie Marie
6-28-63	Johnson, Donna L.
6-28-63	Stuart, Wilmer J.
6-28-63	Green, Samuel C.
7-5-63	Couden, Clevera Mrs.
7-5-63	Noleles, Charles W. Mrs.
7-5-63	Mills, Shirley Rose S.
7-5-63	Stringer, Grady, Mrs.
7-5-63	Morgan, Billy Richard

Group 3 (7 registrants)

The following applicants include in their interpretation the statement that if not by ballot an election would be "illegal".

Date of Registration	Name
11–9–62	Walker, Linda C. H.
4–16–63	Tatum, Bernice F.
4–19–63	Stephens, Doris O
5–8–63	Bryant, Lois
5–8–63	Graves, Ruby Lee
5–31–63	Anderson, James D.
6–6–63	Anderson, Harry Jr. Mrs.

Group 4 (10 registrants)

The following applicants include their interpretation the statement that if not by ballot an election is, or would be, "unlawful".

Date of Registration	Name
6–4–62	Pierce, T. B.
9–23–62	McDonald, Bertis Lemon
10–6–62	Bryant, Joe E.
10–11–62	Hendrix, William S.
1–21–63	Carter, Thomas A.
1–23–63	Simmons, Edgar A.
3–13–63	Graham, Maybell
4–12–63	Hartfield, Robert S.
5–8–63	Creel, Ernestine Mrs.
6–6–63	Anderson, Harry H. Jr.

[fol. 1882] Group 5 (3 applicants)

The following applicants interpret the section in a similarly awkward manner.

Date of Registration	Name	Q.19 & Q.20
11–8–62	Cresorg, Gerald C.	Q19. I think the way that to vote for the best man for that Job, and also what he says he will by ballot. Q20. You must obey the laws and as the state and be loyl to your fellow man.

Date of Registration	Name	Q19. & Q20.
11-9-62	Hagenson, Bernice J.	Q19. Vote for the best man for the office and do what he says by ballot. Q20. Obey the laws of the state and be loyal to your fellow man.
11-9-62	Lane, Myrtle	Q19. Vote for the best man for the office and do what he says by ballot. Q20. Obey all laws.

[fol. 1883]

Date of Registration	Name
1-21-63	Carter, Thomas A.
1-23-63	Simmons, Edgar A.
3-13-63	Graham, Maybell
4-12-63	Hartfield, Robert S.
5-8-63	Creel, Ernestine Mrs.
6-6-63	Anderson, Harry H. Jr.

Group 5 (3 applicants)

The following applicants interpret the section in a similarily awkward manner.

Date of Registration	Name	Interpretation
11-8-62	Cresorg, Gerald C.	Q19. I think the way that to vote for the best man for that Job, and also what he says he will by ballot.
11-9-62	Lane, Myrtle	Q19. Vote for the best man for the office and do what he says by ballot.
11-9-62	Hagenson, Bernice J.	Q19. Vote for the best man for the office and do what he says by ballot.

4. Forms with verbatim or almost identical answers to question 20.

The following registrants answered question 20 (duties and obligations of citizenship) with the statement "obey the law" or its plural form. It should be noted that some of these applicants in this and the following groups are also listed in the categories describing assistance in questions 19 and 20.

Date of Registration	Name
1-23-62	Goor, Eula
9-1-62	Hughes, Billy F.
9-1-62	Jones, Alton R.
9-14-62	Newton, Alice Ann T.
9-23-62	Bryant, Joe E.

[fol. 1884]

10-6-62	McDonald, Bertis Lemon
10-12-62	Rhodes, Eunice Roberta
10-20-62	Davis, Huey B.
10-23-62	Stafford, Melvin
11-20-62	Clinton, Glyn E.
12-18-62	Mims, Alvin D. Jr.
12-20-62	Lucas, Curtis W.
1-2-63	Webb, Doris M.
1-4-63	Haddox, Ray
1-12-63	Carroll, Delmer
1-14-63	Lamarheuss, William
1-20-63	Miller, Carrie Lane
1-28-63	West, Elizabeth A.
1-30-63	Aultman, Price A.
1-31-63	Bassar, Lila H.
2-8-63	Riles, Roy James
2-15-63	Beach, Cecil D.
2-27-63	Graham, Billy R.
3-8-63	Green, Mary L.
3-18-63	Gore, Henry A.
4-17-63	Dement, Kermit F.
4-20-63	Smith, Gerald N.
5-25-63	Green, Maud E. Mrs.
6-8-63	Boone, Delores V.
6-10-63	Brown, Carol P.
6-27-63	Smith, Lillian V.

[fol. 1885] The following registrants answered question 20 with the statement "Obey the laws of the state".

Date of Registration	Name
5-7-63	Bilbo, Sherry Mrs.
1-22-63	Bynun, Rankin G.
2-7-63	Couttry, John R.
1-23-63	Chambers, Albert D.
2-5-63	Crews, James W.
2-1-63	Cooper, Jasper A.
1-30-63	Entrekin, Ronald Mrs.
5-8-63	Lott, Isabell B.
4-19-63	Lowe, Shirley Roy
5-4-63	Lee, Mrs. Marshall
2-1-63	Morris, Juanita J.
1-29-63	McRaney, Gale Leonard
2-4-63	McCray, Bernice A.
2-5-63	McCraw, Jimmie Ray
1-12-63	McIlwain, William J.
5-18-63	Overstreet, William C. Jr. Mrs.
2-4-63	Pittman, Martha Earline
2-26-63	Steele, Louis M.
1-10-63	Swann, Carolyn Donnette
6-26-63	Saucier, Marie H.
2-26-63	Whiddon, Mrs. Wilborn E.

[fol. 1886] The following registrants answered question 20 with the statement: "To obey the laws of the state."

Date of Registration	Name
9-14-62	Yarbrough, Willie J.
1-9-63	Anderson, Clifton
1-22-63	Smith, Brenda H.
1-31-63	Blackwell, Mona Lee
1-31-63	Keith, Frances E. P.
2-11-63	Bond, Robert R.

[fol. 1887] The following registrants answered question 20 with the statement: "Obey the law of our state" or its plural form

Date of Registration	Name
4-9-63	Casanova, Alma G.
6-7-63	Knue, Charlotte A.
6-20-63	Anderson, Roger D.
6-21-63	Breazeale, N. A.
6-28-63	Johnson, Donna L.
6-31-63	Anderson, John P.
7-5-63	Stringer, Grady, Mrs.
7-5-61	Morgan, Billy Richard

[fol. 1888] The following registrants answered question 20 with the statement: "Obey all laws of the state."

Date of Registration	Name
2-1-63	Harrington, Perry Lee
6-10-63	Dearman, Eula L.

[fol. 1889] The following registrants answered question 20 with the statement: "Obey all law" or its plural form

Date of Registration	Name
10-9-62	Rhodes, Thomas Glenn
10-30-62	Miller, Howard Reece
11-9-62	Lane, Myrtle
1-19-63	Overstrut, Earl Lavon
5-8-63	Lott, Mrs. Charles
6-15-63	Bullock, Roy E.

[fol. 1890] The following registrants answered question 20 with the statement: "Obey the laws, pay your taxes" or some minor variant thereof.

Date of Registration	Name	Q. 20
2-2-63	Anderson, Lucille	Pay you tax and obay your laws.
3-23-63	Dement, Edwin W.	Obay the laws and pay your taxes.

Date of Registration	Name	Q19. & Q20.
4–1–63	Anderson, Dorothy A.	Obey the law and pay you taxes.
4–23–63	Bond, Claude E. Jr.	Pay taxes & obey laws.
5–13–63	Davis, Laguita	Pay the taxes Obay the law
6–6–63	Anderson, Harry H. Jr.	obey the Laws pay your taxes
6–66–3	Anderson, Harry Jr. Mrs.	Obey the law and pay your taxes.
6–7–63	Slade, Brenda Joyce H.	To obey the law and pay your taxes.
6–9–63	Hatten Barbara J.	Obey the laws, and pay your taxes.
6–12–63	Bates, Doris M.	Obey the law's and pay your taxes
6–15–63	McCarter, James Lewis	Obey the laws and pay the taxes.
6–22–63	Smith, Patsy G.	Abey lawes and pay tax
6–24–63	Bounds, Frances	Pay your taxes and obey the laws.
7–1–63	Ledbetter, Zora Pearl	Pay taxes and obey the laws.

[fol. 1891] The following registrants answered question 20 with a statement whose essence is that one enjoys the protection of law.

Date of Registration	Name	Q. 20
1–11–63	Hatten, Millie L.	You have the procten of law.
1–21–63	Carter, Thomas A.	To have protection of the law.
1–22–63	Madden, Joll Kenneth	you have the pertection of the law
1–25–63	Herrington, Leland R.	Just pertaxson of laws.
1–26–63	Bond, Janie W. L.	It gives protection of law.
2–19–63	Lott, Richard Lamar	have protection of law
6–28–63	Swilley, Marie	You have the protection of law.

[fol. 1892] C. Grading

(1) Recopying of section as interpretation

The following registrants merely recopied the section assigned them as their answer to question 19.

Date of Registration	Name
11–4–62	Plant, Peggy Cale
11–7–62	Fowler, Gordan E.
2–1–63	Morris, Joe T.
2–5–63	Crews, James W.
4–17–63	Dement, Kermit F.

[fol. 1893] (2) Interpretations which are non-responsive to the section

The following registrants had unresponsive answers for their interpretations of section 30.

Date of Registration	Name	Q. 19
1–12–63	Carroll, Delmer	Their shall not be no vilets are other thangs to happen.
1–25–63	Herrington, Leland R.	If the Mane is not able to work
2–9–63	Degeyter, Larry	This means that if you should work for a company and they wouldn't pay you the right wages are fail to pay you. They would be violuating section 30.
2–18–63	Hartfield, Glenn G.	There shll be no imprisonment money or taxes and
2–21–63	Simmons, Gary Carl	personal survivorship
4–4–63	Downing, Jeanette Mrs.	No one can be imprison unless they have brake the law
4–7–63	Brewer, Angieleau	Obey the law of our land
6–11–63	Smith, Thomas Albert, Jr.	It is not against the law to buy something on credit.
6–22–63	Lott, Charles Lamar	No person shall be deprived of life, liberty or property except by due process of law.

[fol. 1894] Walthall #76

Part I

A

The following Negro citizens of Walthall County were not permitted to apply to register to vote. All events described below occurred at the Circuit Clerk's office in Walthall County.

74021 74026	Sept., 1960 Refused Wilson–D.C.	He went to apply to register with three other Negroes. Mrs. Wilson said the books were closed until after 1960 election.
74001	Sept., 1960 Refused Wilson–D.C.	He went to register with three other Negroes. Mrs. Wilson said the books were closed four months prior to the election.
74000	Sept., 1960 Refused Wilson–D.C.	He went to register with Luther Guy, Robert Bryant, and Flutcher Magee. Mrs. Wilson told them the books were closed and would not be open until after the November election.
74011	Sept., 1960 Refused Wilson–D.C.	He went to register with three other Negroes (John Ball, Flutcher Magee, and Robert Bryant). Mrs. Wilson told them the books were closed until after the November election.
74023	Sept., 1960 Refused Wilson–D.C.	Mrs. Wilson told Magee and three companions that the books were closed four months prior to the election.
74022	Sept., 1960 Refused Wilson–D.C.	He went with three other Negroes to register and to get poll tax exemption. Mrs. Wilson told them the books were closed for four months prior to the November election. She said that they did not need poll tax exemptions to register.

[fol. 1895]

74020	Winter 1960 Refused Wilson–D.C.	Mrs. Wilson told Magee and three companions that Byrd was ill and that she could not register anyone.
74001	Jan., 1961 Refused Byrd–R	He went with Lutchies Magee and asked to register. Byrd told him he was too sick to register anyone that day.
74000	Jan. or Feb., 1961 Wilson–D.C. Byrd–R	He went with Robert Magee and asked sheriff for poll tax exemption. Sheriff sent them to Circuit Clerk's office. Mrs. Wilson told them to wait for Byrd. They asked Byrd for poll tax exemption and asked to register. Byrd said no poll tax exemption would be issued until registration time and they could not register, since no elections were coming up.
74011	Jan. or Feb., 1961 Refused Wilson–D.C.	He went to register with Easley Walker. Walker got a form but he was told to come back after lunch. He returned but Mrs. Wilson was not there, so he left.
74021 74026	Jan., 1961 Byrd–R Wilson–D.C.	Magee went to register w[illegible] John Ball and asked for poll t[illegible] exemption so that he could register. Mrs. Wilson said Byrd would have to see him. Byrd asked him why he wanted it. Magee said he wanted to register. Byrd said he could not because no election was coming up and would not give him a poll tax exemption certificate.
74023	Jan., 1961 Refused Byrd–R	Byrd told him and Robert Bryant that they could not and need not register since no election was coming up.

[fol. 1896]

74028	Feb., 1961 Refused Wilson–D.C.	Raiford went to register and secure a poll tax exemption. Mrs. Wilson said it was not time for voting and that no application blanks were available.
74013	Aug., 1961 Refused Wood–R	Mr. Guy went up to try to register with William Guy and Flutcher Magee. Jimmy Travis accompanied them to the Courthouse. Wood said he had to go to a Board of Supervisors Meeting and could not fool with them.
74022	Aug., 1961 Refused Wood–R	He went with Walter Guy and William Guy. Wood said he was too busy and had to go to a Board of Supervisors Meeting and did not let them register.
74035	8/30/61 Refused Wood–R	Walker went to Courthouse with Ruby Magee and three other Negroes. He waited outside several hours without being permitted to fill out a form. He left without doing so.
74014	9/6/61 Refused Wood–R	We went with Flutcher Magee and Walter Guy, in the company of John Hardy. Wood told them he was too busy to fool with them and would not tell them when they could come back.
74016	9/6/61 Refused Wood–R	Miss Howard went to register alone. Wood asked her age and if she had proof. He did not give her a form and Miss Howard, after waiting about twenty minutes, left.
74027	9/7/61 Refused Wood–R	She went to apply with Lucius Wilson, John Hardy, voter registration worker, was present. Wood declined to allow Wilson or Mrs. Peters to apply for registration because they already had him in court and hit Hardy with a gun.

[fol. 1897]

74036	9/7/61 Refused Wood–R	He went to register with Mrs. Peters, accompanied by John Hardy. Wood did not permit them to register and said they already had him in court. Wood hit Hardy with a gun.

B

The following Negro citizens of Walthall County were intimidated or deterred from applying to register to vote in Walthall County. All events described below occurred in Walthall County.

74034	8/30/61 Deterred Wood–R	Turner accompanied Ruby Magee, a college student, and Sidney Ellzey, a former teacher, and two other Negroes to Registrar's office. He had attended voter registration meetings. After seeing that Ruby Magee and Sidney Ellzey could not pass, he made no attempt to register.
74015	9/7/61 Deterred Wood–R	Hardy, a voter registration worker for SNCC, accompanied Lucians Wilson and Edith Peters to Wood's office. When Wood discovered he was the Negro voter registration worker he ordered him from the office and struck him on the back of the head with a gun as he was leaving. This happened in the presence of Lucians Wilson and Edith Peters.
74019	9/7/61 Deterred Man	He is a student SNCC worker. He went to the Courthouse to investigate the arrest of John Hardy. A hostile crowd gathered and one man threatened to strike him. He got to see the Sheriff who told him the voter workers were fools—none of the teachers with higher educations were trying to teach the Negroes to register. The sheriff also said that Ruby Magee knew more about the

[fol. 1898]

74019 (Con't)	9/7/61 Deterred Man	Constitution than Wood himself but Negroes weren't getting registered. After he left the Courthouse, a white man threatened to run him over and threatened him with a gun. Robert Bryant, John Ball and other Negroes witnessed this.
74004	Sept., 1961 Deterred Wood–R	Miss Dillon, a college student, decided to register after discussing the matter with John Hardy. She had planned to try on September 9, 1961. After learning what had happened to Hardy on September 7, she decided not to go.
74006	Sept., 1961 Deterred Wood–R	During August, 1961, Dillon went to classes given by John Hardy and others to learn how to register. He planned to apply for registration. After he heard of Wood's assault on Hardy, he became frightened and did not apply.
74018	Sept., 1961 Deterred Wood–R	Lewis went to voter registration classes taught by John Hardy. He intended to register. After he learned of the incident between Hardy and Wood, he decided not to try.
74024	9/7/61 Deterred Wood–R	He was learning how to register from John Hardy and other SNCC personnel, and intended to register. After the assault on Hardy, he decided not to go back until the matter was straightened out.
74032	Sept., 1961 Deterred Wood–R	Miss Simons had intended to register to vote. After it became common knowledge that Circuit Clerk Wood had hit John Hardy, she decided not to attempt to register.

[fol. 1899]

74005	Sept., 1961 Deterred Wood–R	During August, 1961, she went to voter registration classes taught by John Hardy. She had intended to apply for registration. After Wood struck Hardy on the head, she decided not to go.

C

The following Negro citizens of Walthall County were not permitted to register to vote because their interpretations did not satisfy the registrar. All evens described below occurred at the Circuit Clerk's office in Walthall County.

74041	5/24/55 Rejected Byrd–R	Tolbert went alone to register. Received Section 190 (eminent domain) to interpret. Filled out rest of form but was unable to interpret that section. Byrd told him to go home and study.
74039	1/28/56 Rejected Byrd–R	Mrs. Dunham, a Negro school teacher, applied alone. Rev. James May (Negro) was present. She was required to interpret Section 190 of the Constitution (eminent domain), ex post facto laws, and impeachment. Byrd said he would notify her in thirty days as to the result of the application, but never did so. She was rejected because her interpretation of these three sections did not satisfy the registrar.
74031	4/15/58 Rejected Byrd–R	Simmons told Byrd he wanted to register. In answer to Byrd's question, he said he preferred a short section. He received Section 104 (Statutes of limitations against municipalities). He received no assistance except that Byrd told him where to sign. He never learned the result of the examination. He was rejected.

[fol. 1900]

74007	8/30/61 Rejected Wood–R	Ellzey, a former Negro school teacher, went to apply with Ruby Magee and three other Negroes. He waited half an hour and Wood took Miss Magee and himself one at a time. He received Section 53 to interpret. Wood gave him no assistance. When he finished the form, Wood told him he had not made it.
74025	8/30/61 Rejected Wood–R	Miss Magee went to apply with five other Negroes. After some delay, she was given Section 165 to interpret. Wood told her her interpretation and her precinct were wrong. He wrote on the form that she was only twenty. Wood registered Miss Magee during the trial of *United States* v. *Wood*, April 8, 1963.

[fol. 1901] Walthall #76

Part II

Application Forms

1. & 2. Number and Period of Application Forms

The first form in Walthall County is dated April 14, 1955. The last form is dated April 1, 1963. The forms by race during this period are as follows:

	Accepted	Rejected	Pending
White	1,124	2	54
Negro	2	7*	0

* One Negro who was originally rejected was rejected during the trial of *United States* v. *Wood* in April 1963. Also, the race of two applicants who filled out forms in 1960 but did not sign the Registration Book is unknown.

No Negro was accepted, and no known white applicant rejected, until September 25-27, 1961, during which period two Negroes were rejected and one white applicant accepted. This three-day period was between two hearings in a voter intimidation case brought by the United States against Registrar Wood under 42 U.S.C. 1971(b).

3. Analysis of Forms

(a) Selection of Constitutional sections

(1) The following table represents the incidence by race of the sections of the Constitution during the period April 14, 1955, through April 1, 1963:

[1902]

Section	W	N	Section	W	N	Section	W	N
1	1		73	8		156	1	
2	2		74	1		157	1	
5	3		75	20		158	7	
6	1		76	1	1	162	8	
7	2		80	1		163	1	
8	2		81	1		164	23	
9	18	1	83	3		165	2	1
10	1		84	1		166	4	
11	10		86	4		167	7	
12	2		91	1		168	1	
13	1		92	12		172	5	
14	122		93	20		173	1	
15	3		96	1		174	5	
19	1		98	1		175	5	
20	20		101	5		176	4	
21		1	104		1	185	1	
22	10		105	2		188	2	
23	1		106	1		189	2	
24	6		108	22		190		2*
25	6		113	1		191	3	
28	26		114	3		192	1	
29	3		116	3		195	3	
30	180		117	6		196	1	
31	1		118	3		201	1	
33	10		119	3		202	1	
34	1		120	2		203	1	
35	28		122	7		205	5	
36	1		123	36		207	34	
37	9		125	1		208	3	
38	5		126	9		209	12	
39	13		127	2		210	1	
41	2		128	5		214	3	
42	1		129	2		215	3	
43	3		130	11		216	1	
45	1		132	1		217	2	
46	1		134	1		218	2	
47	2		135	1		219	4	
48	2		136	3		220	2	
49	2		138	3		221	1	
50	1		139	1		223	1	
53		2	141	1		226	2	
56	1		142	2		231	2	
57	2		143	5		232	1	
58		1	146	2		237	1	
61	1		148	17		238	1	
62	1		150	10		239	1	
65	1		151	1		240	12	
67	69		152	23		245	1	
68	3		153	4		247	4	
70	3		154	1		248	1	

* One of the Negroes who was assigned Section 190 was also required to explain impeachment and ex post facto laws. She was rejected for registration.

[fol. 1903]

Section	W	N
249	1	
250	18	
253	1	
257	6	
258	1	
259	4	
261	1	
263	4	
264	4	
265	23	
267	1	
271	2	
Unknown	8	

(2) The following shows the incidence by race of sections of the Constitution assigned to Negro applicants:

Sec.	Subject Matter	Negroes	White
9	Military subordination to civil power	1	17
31	Suspension of writ of habeas corpus	2	0
53	Removal of judges for cause insufficient for impeachment—Procedure	2	0
58	Doors of house open—contemptuous behavior—committee of the whole	1	0
76	Legislature votes viva voce	1	1
104	Statute of limitations—inapplicability to state or municipal corporations—Governor's messages to legislature	1	0
122	Recommendation of expedient measure	1	7
165	Disqualification of judges for consanguinity, etc.	1	2
190	Eminent domain—no abridgment—property and franchise of incorporated companies	2	0

The only two sections assigned to Negroes which were also assigned to whites in more than token numbers were Sections 9 and 122. The Negroes to whom these sections were assigned, Ezra Conerly and Milton Huey, were the only two Negroes accepted for registration prior to the [fol. 1904] trial of the case of *U.S.* v. *State of Mississippi* in April 1963. Both were registered in September 1961, during the period between two hearings in the case of *U.S.* v. *Wood*, a voter intimidation case against the registrar in Walthall County.

Only two of the sections assigned to rejected Negroes (76 and 165) were assigned to whites, and a total of three white applicants received these sections. Each of these three white applicants received his section after it had been assigned to a Negro. *Not a single rejected Negro applicant was assigned a section which had ever been given to a white applicant before.*

(3) The ten sections of the Mississippi Constitution most commonly assigned to white applicants, all relatively short and easy except Section 14 dealing with due process, which 42 of the whites simply recopied) were never assigned to Negroes at all. These ten sections were assigned to 554 white applicants, approximately half of the total. Their incidence was:

Sec.	Subject Matter	Negroes	White
30	There shall be no imprisonment for debt	0	180
14	No person shall be deprived of life, liberty, or property except by due process of law	0	122
67	No bill shall be introduced into either house of the legislature during the last three days of the session	0	69
207	Separate schools shall be maintained for children of the white and colored races	0	34
123	The governor shall see that the laws are faithfully executed	0	36
35	The senate shall consist of members chosen every four years by the qualified electors of the several districts	0	28
28	Cruel or unusual punishment shall not be inflicted, nor excessive fines be imposed	0	26

[fol. 1905] Of the 1,180 white applicants, a total of 1,153 (approximately 98%) received sections of the Constitution never assigned to Negroes.

(4) Section 190 of the Mississippi Constitution reads as follows:

> The exercise of the right of eminent domain shall never be abridged or so construed as to prevent the legislature from taking the property and franchise of incorporated companies and subjecting them to public use; and the exercise of the police powers of the state shall never be abridged, or so construed as to permit corporations to conduct their business in such manner as to infringe upon the rights of individuals or general well-being of the state.

The first two Negroes in Walthall County who were permitted to fill out application forms were assigned this section to interpret.

Agee Tolbert received Section 190 on May 21, 1955, was unable to interpret it, and failed. During the period from May 10, 1955, to June 6, 1955, 45 white persons filled out application forms and 43 of them received Section 14 (due

process). All 45 were accepted. Twenty-five of these white applicants simply recopied the section verbatim.

Mrs. Melverson Guy Dunham received Section 190 on January 28, 1956. On the same day, of two white applicants, one received Section 30 and recopied it verbatim (There shall be no imprisonment for debt) and the other received Section 108 (salary of officer ceases when duties cease). No white person received Section 190 [fol. 1906] or any section of comparable difficulty during the period surrounding Mrs. Dunham's form.

In addition to interpreting Section 190, Mrs. Dunham was required to answer the following questions:

> "What are "Ex Post Facto Law" and when can one be passed in Mississippi. Explain fully";
> and
> "Define "impeachment" and who has the sole power in this State?"

She was the only applicant in Walthall County to be asked such additional questions. Mrs. Dunham's application for registration was rejected.

b. *Assistance to White Applicants*

J. M. Byrd was Registrar of Voters in Walthall County from the beginning of the period when forms were used until August 1961, when John Q. Wood was elected following Byrd's death. At the trial of the case of *United States* v. *Mississippi*, Mr. Wood testified that he assisted these white applicants who needed help with question. The furnishing of such assistance on a massive scale is reflected both under Wood and under Byrd by the tables of identical and similar forms set forth below.

(1) Interpretation Test

By Registrar Byrd

Section 30 of the Mississippi Constitution provides: "There shall be no imprisonment for debt."

[fol. 1907] The following 25 accepted white applicants wrote the following verbatim interpretation of Section 30:

> No person should be imprisoned because he owes a debt.

All of them also had standard statements of the duties and obligations of citizenship.

Name of Applicant	Date of Application
Blam, Mrs. H. L.	4-29-55
Brock, Mrs. Johnnie	6-29-55
Waldrop, Ronnie L.	6-29-55
Ratcliff, Mrs. James W.	7-1-55
Burnette, Mrs. Gerald	7-2-55
Phillips, Flora Mae	7-2-55
Foches, Mrs. John A.	7-5-55
Gartman, Mrs. V. L.	7-5-55
Hightower, Bud	7-5-55
Hightower, Hugh C.	7-5-55
Hightower, Lewis	7-5-55
Stringer, Mrs. Johnie	7-5-55
Dunaway, Mrs. Elda	7-6-55
Goings, Ellene Ollie J.	7-6-55
Cathern, Marvie	7-7-55
Conerly, Monroe	7-7-55
Conerly, Quida D.	7-7-55
Duncan, Mrs. Albert	7-7-55
McKenzie, Mrs. James	7-7-55
Morris, Mrs. James	7-7-55
Boyd, Mrs. A. W.	7-8-55
Simmons, Mrs. John P.	7-8-55
Stuvall, Mrs. J. T.	7-8-55
Thomas, Mrs. Christine	7-8-55
Dier, Junior	7-8-55

The following 10 accepted white applicants wrote as their interpretation of Section 30 a very slight variation of the standard in Group 1, above, as follows:

> No person shall be imprisoned because he owes a debt.

All of them also had standard statements of the duties and obligations of citizenship. All applied between June 18 and July 27, 1955.

[fol. 1908] Name of Applicant	Date of Application
Graves, Pauline	6-18-55
Howell, Mrs. Dorothy J.	6-23-55
Ard, Johnie Lou	6-25-55
Holmes, Mrs. Hixton	6-28-55
Ballard, James R.	6-29-55
Thomas, Joe D.	6-29-55
Forbes, John A.	7-5-55
Pope, Frances (Mrs. Gueid)	7-8-55
Wallace, Mrs. Willene	7-8-55
Robbins, Winston F.	7-27-55

The following 18 accepted applicants wrote the following slight variation of the standard interpretation in Groups 1 and 2:

No person can be imprisoned because he owes a debt. Fifteen of them also wrote one or another of several standard statements of the duties and obligations of citizenship.

Name of Applicant	Date of Application
Boyd, Mary	6-25-55
Martin, Carl W.	6-27-55
Berry, Delores	6-30-55
Patten, Ina L.	1-14-56
Lawrence, Harold D.	5-21-56
McKenzie, Mrs. J. R., Jr.	2-26-57
Smith, Charles E.	9-14-57
McCain, Ada M. (Barber)	12-22-58
Forbee, Earl E.	3-5-59
Edwin, Josephy W.	3-10-59
Thomas, Lillian C.	3-30-59
Ryals, Frances E.	4-7-59
Fortenberry, Mrs. C. E.	4-10-59
Fortenberry, Mrs. Mary L. L.	4-21-59
Papwell, Louise	4-25-59
Alford, Mrs. Cletes	6-5-59
McCain, Mrs. James D.	6-15-59
Roberts, Mrs. Perry, Jr.	7-2-59

[fol. 1909] The following 7 accepted white applicants wrote the following slight variation of the above standard interpretations:

No person should be put in prison because he owes a debt.

Five also wrote standard statements of the duties and obligations of citizenship:

Name of Applicant	Date of Application
Seago, Billie F.	6-15-55
Gerald, Fannie	6-20-55
Morris, Mrs. L. W.	6-24-55
Breland, Mrs. Toxie	6-25-55
Breland, Toxie H.	6-25-55
Holmes, Lester W.	7-5-55
Brock, Mrs. Samuel	7-8-55

The following 10 accepted white applicants wrote the following slight variation from the above standard interpretations:

No person can be put in prison because he owes a debt. Seven also wrote one or another of several standard statements of the duties and obligations of citizenship:

Name of Applicant	Date of Application
Boyd, Bobby J.	6-15-55
Johnson, Mrs. Clifton	6-18-55
Boyd, Mrs. Glen	7-5-55
Brumfield, Mrs. Altus	1-14-56
Brumfield, Altus	10-1-56
Foil, Mrs. Thomas E.	5-1-59
Stringer, John F.	6-1-59
Pierce, Julius	6-26-59
Bates, Veta N.	6-30-59
Sorrell, Chalmes	1-2-60

[fol. 1910] The following four accepted white applicants wrote the following variation of the above standard interpretations of Section 30, all between May 16 and June 26,

1959. All of them also wrote standard statement of the duties and obligations of citizenship:

Name of Applicant	Date of Application
Lee, Beulah	5-16-59
Dunaway, Enoch O.	5-27-59
Denwolf, Martin	5-30-59
Ball, Gabell	6-26-59

The following nine accepted white applicants simply recopied Section 30 as their interpretation of Section 30. Eight wrote one or another of two standard statements of the duties and obligations of citizenship. A ninth, Alton Ard, cannot write legibly but apparently attempted to write "law-abiding," which is the gist of one of these standard statements.

Name of Applicant	Date of Application
Magee, Charlie W.	9-11-55
Slocum, Mrs. Mentoria	6-18-55
Ard, Alton	6-20-55
O'Quinn, Jack D.	7-2-55
Edwards, Hollis O.	7-6-55
Johnson, Edna L.	7-7-55
Holmes, Mrs. Lester	7-3-55
Swan, Bob T.	7-20-55
Stewart, William S.	1-28-56

Section 14 of the Mississippi Constitution reads as follows:

> "No person shall be deprived of life, liberty or property except by due process of law."

The following 42 accepted white applicants, 35 of whom applied between May 13 and July 7, 1955, simply [fol. 1911] recopied the section for their interpretation. Thirty-one of them had statements of duties and obligations identical or extremely similar to those of other applicants:

Name of Applicant	Date of Application
Howell, Donald	5-13-55
Lee, Mrs. Douglas	5-13-55

Name of Applicant	Date of Application
Turnage, Ralph E.	5-13-55
Herring, Norma Lou	5-14-55
Pittman, Helen J.	5-14-55
Smith, Vera L.	5-14-55
Vortiach, Jim E.	5-16-55
Alexander, Dorothy Mae	5-17-55
Breland, Robert E.	5-20-55
Ellis, Devon	5-20-55
Ellis, Joy Faye	5-21-55
Dunaway, Leslie	5-21-55
Ellis, Charlene	5-21-55
McElveen, Sarah	5-30-55
Rials, Mrs. M. E.	5-30-55
Lee, Douglas E.	6-1-55
Rushing, Audine	6-2-55
Rushing, Paul	6-2-55
Wood, Mrs. Bobbie E.	6-3-55
Crawford, Logan A.	6-4-55
Ginn, Osborne	6-4-55
Howell, William H.	6-4-55
Thomas, Sallie	6-4-55
Brown, Ethel A.	6-6-55
Duncan, Duroe	6-6-55
Whiddon, Ruby Marie	6-8-55
Dunaway, Mrs. Devoy E.	6-10-55
Stogner, Jessie L.	6-10-55
Dillon, Jimmie T.	6-11-55
Dykes, Melba	6-11-55
Cothern, Mrs. Welton D.	6-18-55
Moseley, Elthabye	7-2-55
O'Quinn, Glen B.	7-2-55
Lewis, Mary E.	7-4-55
Alford, Mrs. James T.	7-7-55
Crain, Bobby Ray	12-31-55
Thomas, Gladys T.	1-13-56
Thomas, Marcus S.	1-13-56
Beard, Ruth H.	12-4-56
Bracey, Frances Joyce	3-18-57
Smith, Douglas M.	1-17-59
Brown, Howard	3-12-59

[fol. 1912] By Registrar Wood

Registrar Wood assigned more different sections to applicant than did his predecessor Byrd. As a result, standard constitutional interpretations are less common during his incumbency. Mr. Wood testified, however, that he assisted white applicants with thir interpretations.

The following standard interpretations were given during Mr. Wood's incumbency.

The following 7 accepted white applicants wrote, substantially verbatim, this interpretation of Section 162 of the Mississippi Constitution (dealing with transfer of causes from Chancery Court to Circuit Court):

> The law provides that any suit at law filed in the Chancery Court whereas the circuit court has jurisdiction of said cause shall be transferred to the circuit court for disposal.

Six also had substantially identical and quite complex statements of the duties and obligations of citizenship:

Name of Applicant	Date of Application
Smith, Earl	1-9-62
Fortenberry, Charles E.	1-26-62
Magee, Mary B.	1-26-62
Brown, Jesse E.	2-3-62
Forsberg, Torsten J.	2-21-62
Graves, Georgia L.	3-21-62
Sauls, Jerry L.	5-26-62

The following three accepted white applicants wrote substantially identical interpretations of Section 39 of the Mississippi Constitution (Lieutenant Governor's duties):

[fol. 1913] > The Lieutenant Governor is the senate's presiding officer but the senate elects a man in case he is absent or disabled.

The last two preceded this statment by the word "Interpretation." The first two have very similar statements of duties and obligations and the third has some themes in common with them.

Name of Applicant	Date of Application
Magee, Katie Y.	10-27-61
Terrell, Henry H.	1-23-62
McKenzie, Mrs. Maudie	12-2-61

The following two accepted white applicants wrote the following verbatim interpretation of Section 120 (Governor may require information in writing from heads of executive departments):

> All departments must keep the governor informed as to the discharge of the duties of their office.

Name of Applicant	Date of Application
Boyd, Mrs. Vera	11-30-61
Johnson, Major B.	1-22-62

The following two accepted white applicants wrote the following verbatim interpretation of Section 122 of the Mississippi Constitution (dealing with the Governor keeping the legislature informed):

> The governor is required to inform the legislator from time to time as to the condition of the state and its fanancial condition and to suggest what law and edicts and measures should be taken to alleviate the condition for the betterment of the State and its people.

[fol. 1914] They also wrote verbatim statements of the duties and obligations of citizenship.

Name of Applicant	Date of Application
Ratliff, Wilson	2-3-62
Johnson, Harold L.	1-23-62

The following two accepted white applicants wrote, practically verbatim, the following interpretation of Section 259, dealing with the necessary vote for removal of a county seat:

> Under this section of the constitution a county seat cannot be removed from its present location unless

such removal is approved of by two thirds of the votes that might be cast in such an [election] [action]. However, such removal to a more central part of the county shall require only a majority of the votes cast.

They also wrote practically verbatim and extremely complex statements of the duties and obligations of citizenship.

Name of Applicant	Date of Application
Alford, William D., Jr.	10-29-62
Owens, Lois Lucile	11-5-62

(2) Duties and Obligations of Citizenship

By Registrar Byrd

1. The application of the following 76 white applicants are substantially identical in context and contain the following themes:

1) obey the law, and
2) answer the call of the county (or country)

The first two added the theme of Christianity. All of [fol. 1915] these applicants wrote their statements between June 18 and July 27, 1955.

Name of Applicant	Date of Application
Cothern, Welton D.	6-18-55
Graves, Pauline	6-18-55
Johnson, Mrs. Clifton	6-18-55
Clocum, Mrs. Mentoria	6-18-55
Cothern, Mrs. Welton D.	6-18-55
Wallace, Billy P.	6-18-55
Stinson, Mrs. Clifton	6-20-55
Deavers, Pauline B.	6-20-55
Gerald, Fannie	6-20-55
Sistrunk, James W.	6-22-55
Rushing, Florence M. (Clark)	6-23-55
Ratliff, Mrs. Billie J.	6-23-55
Alford, Wendell H.	6-24-55
Morris, Mrs. P. H.	6-24-55
Ard, Johnie Lou (Mrs. Willie J.)	6-25-55
Brock, Rodney L.	6-25-55

Name of Applicant	Date of Application
Breland, Mrs. Toxie	6-25-55
Breland, Toxie H.	6-25-55
Boyd, Mary	6-25-55
Travis, Mrs. Alvin O.	6-25-55
Forbes, C. D.	6-25-55
Martin, Carl W.	6-27-55
McKenzie, Carter	6-27-55
Sandifer, Edgar V.	6-28-55
Kennedy, Mrs. Denner	6-28-55
Holmes, Mrs. Hixton	6-28-55
Elam, Mrs. H. L.	6-29-55
Brock, Mrs. Johnnie	6-29-55
Ballard, James R.	6-29-55
Waldrop, Ronnie L.	6-29-55
Thomas, Joe D.	6-29-55
Berry, Delores F.	6-30-55
Breland, Paul	7-1-55
Ratcliff, Mrs. James W.	7-1-55
Phillips, Flora Mae	7-2-55
Burnette, Mrs. Gerald	7-2-55
Thomas, Mrs. Roy	7-2-55
Cothern, Marguerite L.	7-2-55
Cothern, Charlie E.	7-2-55
O'Quinn, Glen B.	7-2-55
O'Quinn, Jack D.	7-2-55
Hightower, Bud	7-5-55
Boyd, Mrs. Glen	7-5-55
Hightower, Lewis	7-5-55
Hightower, Hugh C.	7-5-55
Gartman, Mrs. V. L.	7-5-55

[fol. 1916]

Holmes, Lester W.	7-5-55
Martin, Dewey R.	7-5-55
Foches, Mrs. John A.	7-5-55
Stringer, Mrs. Johnie	7-5-55
Dunaway, Mrs. Elda	7-6-55
Goings, Ellene Ollie J.	7-6-55
Edwards, Mrs. Hollis	7-6-55
Edwards, Hollis O.	7-6-55

Name of Applicant	Date of Application
Rayborn, Billy B.	7-6-55
Cathern, Marvis	7-7-55
Conerly, James L. Jr.	7-7-55
Conerly, James L., Jr.	7-7-55
Conerly, Monroe	7-7-55
Conerly, Quida D.	7-7-55
Duncan, Mrs. Albert	7-7-55
McKenzie, Mrs. James	7-7-55
Morris, Mrs. E. G.	7-7-55
Alford, Bobbie Nell	7-8-55
Boyd, Mrs. A. W.	7-8-55
Holiday, Olin R.	7-8-55
Holmes, Mrs. Lester	7-8-55
Lampton, Dorothy C.	7-8-55
Pope, Frances (Mrs. Oueid)	7-8-55
Simmons, Mrs. John P.	7-8-55
Stuvall, Mrs. J. P.	7-8-55
Thomas, Mrs. Christine	7-8-55
Wallace, Mrs. Willene	7-8-55
Yarborough, Louis G.	7-8-55
Swan, Bob T.	7-20-55
Robbins, Winston F.	7-27-55

The following 74 accepted white applicants, all of whom applied during 1959, wrote substantially identical statements of the duties and obligations of citizenship, as follows:

To live according to and uphold the laws of the state.

Name of Applicant	Date of Application
Sandifer, Jordan A.	1-20-59
Thomas, Rosetta Ard	1-21-59
Magee, Malcum E.	1-22-59
Moore, J. D.	1-22-59
Hartzog, Georgia Mae	1-23-59
Johnson, Mrs. Mary L. M.	1-23-59

[fol. 1917]

DuBose, Mrs. Delores N.	1-24-59
Sauls, Mrs. Doyle	1-24-59

Name of Applicant	Date of Application
Smith, Mrs. E. B.	1-24-59
Stogner, Mrs. Evelyn	1-26-59
Cook, William T.	1-27-59
Alexander, Mrs. Gertie Mae	1-28-59
Stogner, Kathleen	1-28-59
Carr, Carl Benjamin	1-29-59
Gartman, Edith E.	1-29-59
Bergeron, Thelma H.	1-30-59
Ginn, Billy G.	1-30-59
Harvey, Mrs. Wesley O.	1-30-59
Etheridge, Lionel G.	1-31-59
Herring, Huey P.	1-31-59
Thornhill, Ellis F.	1-31-59
Pigant, Thomas E.	2-4-59
Dunaway, Wilkie R.	2-7-59
Alexander, Jimmy D.	2-13-59
Cothern, Josephine	2-21-59
Holmes, Lucy Mae	2-21-59
Ladner, Martha Anna A.	2-27-59
Brown, Harrord	3-12-59
Thomas, George H.	3-12-59
Milton, John F.	2-17-59
Brown, Millard R.	3-19-59
Alford, George E.	3-20-59
Alford, Wendell H.	3-20-59
Hill, Mrs. Leon	3-28-59
Thomas, Lillian C.	3-30-59
Rushing, Mrs. Willis, Jr.	4-6-59
Ginn, Ruby Ognes	4-7-59
Ratliff, Sarah L.	4-9-59
Ard, Claude	4-13-59
Jordan, Thomas H.	4-13-59
Papwell, Louise	4-25-59
Mitchell, Eula H.	5-1-59
Rayborn, Chris T.	5-7-59
Fortenberry, Vam	5-9-59
Barnes, Jerry F.	5-15-59
Peterson, Vera M.	5-19-59
Dunaway, Enoch O.	5-27-59
Rowell Reade Mae	6-4-59
Pigott, Elverdie	6-9-59

Name of Applicant	Date of Application
Thomas, Hilamn J., Jr.	6-9-59
Dier, O. F.	6-13-59
McCain, Mrs. James D.	6-15-59
Rimes, Patricia M.	6-16-59
Rushing, Mary H.	6-20-59
Burnthorn, Mrs. Leroy	6-24-59
Ard, Mrs. W. O.	6-25-59
Graves, David M.	6-25-59

[fol. 1918]

Ball, Gabell	6-26-59
Fairburn, Mrs. Willard	6-26-59
Stogner, Mrs. Floyd	6-26-59
Alexander, Myrtle E.	6-27-59
Woodard, Mrs. Frank	6-27-59
Breeland, Ellen R.	6-29-59
Lowrey, Clinton E.	6-30-59
Magee, Rose J.	6-30-59
Sandifer, Davis T.	6-30-59
Brown, Olin R.	7-2-59
Cathern, Miss Betty S.	7-2-59
Cothern, Gloria D.	7-2-59
Graves, Mrs. Harlon, Jr.	7-3-59
Martin, Amanda J.	7-3-59
Craft, Sara N.	7-6-59

By Registrar Wood

Wood admitted on the stand that he furnished white applicants themes which they used in their statements of duties and obligations. These themes included:

1) endeavor to become a registered voter;

2) pay all taxes (or a just proportion of one's taxes); and

3) obey and respect the law.

These themes appear in the following 237 of the forms of the 320 white persons who applied during Wood's incumbency:

Name of Applicant	Date of Application
Ratliff, Billie Dee M.	10-7-61
Ratliff, Gerald L.	10-7-61
Bozeman, Louis E.	10-8-61
Burnett, Doris L.	10-14-61
Rayborn, Mrs. Nettie B.	10-18-61
Alford, Dan	10-20-61
Burnette, June V.	10-21-61
Herrin, Hazel F.	10-27-61
Magee, Katie Y.	10-27-61
Magee, Zake A.	10-27-61
[fol. 1919]	
Boyd, Mrs. Vera	11-30-61
McKenzie, Mrs. Maudie	12-2-61
Boyd, Jimmie J.	12-6-61
Brumfield, Henry R.	12-19-61
McDaniel, Nell F.	1-8-62
Smith, Bonnie J. B.	1-9-62
Rocker, Bonnie J. B.	1-13-62
Vince, Paul L.	1-15-62
Forsberg, Mrs. Johna	1-16-62
Swan, Mrs. James	1-16-62
Rayborn, Joyce B.	1-17-62
Boyd, Alma J.	1-20-62
Dunaway, Modie	1-20-62
Johnson, Harold L.	1-23-62
Williams, Weneva B.	1-23-62
Haden, Sara Jo	1-24-62
Brister, Erma N.	1-25-62
Brister, Mamie M.	1-25-62
Dillon, Lovie M.	1-25-62
Reid, Carma N.	1-25-62
Boyd, Polly Sue	1-26-62
Brumfield, Loffie L.	1-26-62
Fortenberry, Charles E.	1-26-62
Kirkpatrick, Annie M.	1-26-62
Kirkpatrick, Hubie C.	1-26-62
Magee, Mary B.	1-26-62
Stinson, Mrs. Leslie	1-26-62
Cooper, Alton W.	1-27-62
Cooper, Sylvia D.	1-27-62

Name of Applicant	Date of Application
Johnson, Albert A.	1-27-62
Dixon, Joyce N.	1-29-62
Sullivan, Mrs. Ruby T.	1-29-62
Tunage, Wayne	1-29-62
Arno, Ruth K.	1-30-62
Beard, Elbert E.	1-30-62
Boyd, J. C.	1-30-62
Brister, Mrs. Buel	1-30-62
Bronn, Paulin M. (Mrs.)	1-30-62
Crain, William J.	1-30-62
Fortenberry, Dodd	1-30-62
Mangum, Claudine	1-30-62
Sawyer, Hetty	1-30-62
Stogner, Iverson (Mrs.)	1-30-62
Strickland, Lester A.	1-30-62
Strickland, Wilda P.	1-30-62
Dunaway, Daisy R.	1-31-62
Fortenberry, Emmer G.	1-31-62
Reagan, Carolyn L.	1-31-62
Stogner, Betty J.	1-31-62
Burkhalter, Arnold S.	2-1-62

[fol. 1920]

Davis, James C., Jr.	2-1-62
Harvey, Garra K.	2-1-62
Brown, Jesse E.	2-3-62
Ratliff, Wilson	2-3-62
Fortenberry, Annie L.	2-6-62
Touchstone, Dorothy I	2-17-62
Greer, Edward	2-20-62
Forsberg, Torsten J.	2-21-62
Thomas, Emma L.	2-27-62
Walters, Alexandes H.	2-27-62
Coon, Bobby L.	3-3-62
McCain, Charles E.	3-3-62
Pitts, Jack	3-5-62
Smith, Winston E.	3-6-62
Howell, Bobby J.	3-9-62
Boyd, Janice S.	3-17-62
Griffin, Betty J.	3-17-62
Latham, Ida Mae	3-17-62

Name of Applicant	Date of Application
Latham, Troy J.	3-17-62
Graves, Georgia L.	3-21-62
Graves, Marcus E.	3-21-62
Graves, William N.	3-21-62
Polk, Kenneth R.	3-24-62
Webb, Mrs. Ina	4-5-62
King, Leonie S.	4-19-62
Alford, Thomas E.	4-21-62
Alford, Mrs. Thomas E.	4-23-62
Barrett, John C. Jr. (Dr.)	4-25-62
Simmons, Terra M.	5-2-62
Harvey, Betty D.	5-7-62
Breland, Linda R.	5-12-62
Copeland, Eula Mae	5-14-62
Dillon, William H.	5-21-62
Greer, Jewel S.	5-22-62
Herring, Reuben R. III	5-26-62
Sauls, Jerry L.	5-26-62
Sauls, Theola A.	5-26-62
Lee, Agnes Mae	5-28-62
Hilburn, Frank	6-4-62
Pigott, Mrs. Winston T.	6-4-62
McKenzie, Johnny M.	6-7-62
Bullman, Donald L.	6-8-62
Brunfield, Mrs. Verne	6-12-62
Gelpi, Golda	6-12-62
Sumrall, Mrs. John W.	6-12-62
Spencer, Brenda G.	6-14-62
Ginn, Mrs. Eugene B.	6-16-62
Smith, Mrs. Percy	6-16-62
Ward, Eddie J.	6-19-62
Seals, Bernice	6-26-62
[fol. 1921]	
Harrell, Betty Mae R.	7-2-62
Sorrell, Stella	7-13-62
Ervin, Jerry	7-18-62
Sistrunk, Betty Jo	7-18-62
Dillon, Charles Albert	7-23-62
Alford, Mrs. Heuland J.	1-25-62
Dillon, Lola Mae	7-27-62

Name of Applicant	Date of Application
McElveen, Lexie Mae	7-28-62
Boyd, Peggy Marie Smith	8-2-62
Sorrell, Ruth Leonard	8-2-62
Hightower, Wilton Ray	8-7-62
Ratliff, Laura Irene	8-1-62
Dillon, Douglas E.	9-18-62
Stinson, Joseph Morris	9-26-62
Stinson, E. Janis McDovell	9-26-62
Reid, Glenn	10-1-62
Luper, Mrs. Effie Naomi	10-5-62
Walker, James Franklin	10-6-62
Berlinger, Myrtis Lea	10-17-62
Berlinger, Walter E.	10-17-62
Burnette, Earl Elvin	10-31-62
Stogner, John Ralph	10-31-62
Vince, Vera Mae	11-2-62
Breland, Burnis Elton	11-3-62
Street, Dorothy	11-3-62
Alford, James H.	11-5-62
Bergeron, Joseph William	11-7-62
Luter, Dorothy	11-9-62
Luter, Hyman H.	11-9-62
Blackburn, Mrs. James Carl	11-10-62
Dockery, William L.	11-10-62
Dockery, Bonie Elaine	11-10-62
Ginn, Mary Nell	11-19-62
Alford, Mrs. Dan	11-30-62
Sistrunk, Paul	11-30-62
McBeth, Christine	12-1-62
Boyd, Alfred Leon, Jr.	12-4-62
Dairs, Joyce B.	12-4-62
Berry, Charles Edward	12-17-62
Salero, Roy Wilson	12-17-62
Boyd, Meldon A.	12-24-62
Ginn, Bobby	12-24-62
Blackwell, Quitman Ned	12-28-62
Ginn, Mrs. John R.	12-28-62
Richmond, Mrs. Hadley	12-29-62
Richmond, Hadley	12-29-62
Graham, Nell	1-2-63
Vince, William Robert	1-2-63

Name of Applicant	Date of Application
Dunlap, Mrs. H. R.	1-3-63
Fulgham, Lloyd	1-4-63

[fol. 1922]

Fulgham, Johnny Roy	1-4-63
Stewart, Nolan Irvin	1-4-63
Felder, Brenda Cora	1-7-63
Johnson, Jimmy Earl	1-8-63
Jolley, Doris Ann	1-10-63
Jones, William Earl	1-11-63
Baughman, David Oliver	1-11-63
Holmes, Walter Randolph	1-12-63
Magee, Jack	1-16-63
Magee, Racine	1-16-63
Rushing, Joseph George	1-16-63
Woodard, Lessie Mae Thomas	1-17-63
Woodard, Steven Nathaniel	1-17-63
Raynes, Willis Robert	1-18-63
Rand, Rickie Myrle	1-18-63
Katliff, Ira Nelson	1-21-63
Mowdy, Bessie Ivon	1-21-63
Stogner, Russell G.	1-21-63
Rushing, Bill	1-23-63
Rushing, Shirley E.	1-23-63
Fortenberry, Mrs. Dodd	1-23-63
Cathern, Arthur C.	1-24-63
Branch, J. D.	1-28-63
Duncan, Bobbie	1-28-63
Strain, Arie May Johnson	1-28-63
Terrell, Jeanell	1-28-63
Holmes, Mrs. Claude	1-29-63
Beard, Junior (Will)	1-30-63
Herrington, Homer Byron	1-30-63
McKenzie, Mrs. Willie Nell	1-30-63
Yarborough, Wilma D.	1-30-63
Blackwell, Dana E.	1-31-63
Capps, Robert Ellis	1-31-63
Drummond, Earl T.	1-31-63
Drummond, Daisy Lee Howell	1-31-63
Harvey, Robert Curtis	1-31-63
Holmes, David Lucina	1-31-63

Name of Applicant	Date of Application
Holliday, James Burrel	1-31-63
McKenzie, Albert Roy	1-31-63
McElwin, Ralph	1-31-63
Stinson, Hugh	1-31-63
Stinson, Mrs. Hugh E.	1-31-63
Crawford, Ann	2-1-63
Hawn, Mrs. Weslay	2-1-63
Vaught, Valera Lee	2-1-63
Hinson, Joel Hunt	2-2-63
Quin, Mrs. Cecil	2-4-63
Langston, Johnnie Mae	2-5-63
Martin, Ralph Edwin	2-5-63
Mangum, Carolyn Francis	2-6-63

[fol. 1923]

Sutton, Mary Elizabeth	2-6-63
Buck, Jewitte James, Jr.	2-7-63
Stewart, John Paul	2-7-63
Magee, Sammy Jewell	2-9-63
Terrell, Herman Edward	2-9-63
Brumfield, James Willie	2-11-63
Brumfield, Judy Pat	2-11-63
Stewart, Georgia Maxine	2-12-63
Magee, Charles E.	2-13-63
Harvey, Mrs. B. B. (Anie)	2-18-63
Harvey, Burtie Benett	2-18-63
Alexander, James Edward	2-19-63
Alexander, Evelyn C.	2-19-63
Morris, William Alexander	2-19-63
Wood, Bobby Mitchell	2-19-63
Dillon, Paul Edward	2-20-63
Dillon, Doris Faye	2-21-63
O'Quinn, John Everette	2-23-63
Bearden, Bismark Bishop	2-25-63
Bearden, Mrs. Bismark	2-25-63
Branch, Virginia A.	2-26-63
McKenzie, Lucille B.	2-26-63

[fol. 1924] Walthall County #76

C. Grading

In view of the large numbers of standard answers (see assistance) appearing on the application forms there is little occasion for the grade of the form. The following forms, however do reflect discrimination in grading.

(1) 42 white applicants recopied Section 14 as their interpretation thereof and 9 white applicants recopied Section 30 as their interpretation of that section. All were registered.

(2) The only known white applicants who were rejected during the entire period for which forms were returned were Paul Dier, on September 26, 1961, and Jerry Sauls, on March 10, 1962. Neither wrote a constitutional interpretation or a statement of the duties and obligations of citizenship.[1] Every white applicant who wrote or copied anything in Questions 19 or 20 was registered. At the trial of *United States* v. *Wood, the* following seventeen white applicants who were registered were shown to be of law literacy:

[fol. 1925] D. The following white witnesses

Name	Date of Application
1. Claude Rowell	6-3-59
2. Reade Mae Passman	6-9-59
3. Howard Brown	3-12-59
4. Mrs. Buel Brister (can write but not read)	1-30-62
5. Franklin Hilburn	6-9-62
6. Mrs. Robert Thomas	5-1-59
7. Harold L. Johnson	1-23-62
8. Enos Mitchell	7-2-59
9. Hugh C. Hightower	7-5-55

[1] Sauls was subsequently registered on May 26, 1962, on a form in which the constitutional interpretation and the duties and obligations were identical to those of six other applicants. When confronted with that form on the witness stand, Wood said it looked as though he had given him the answer.

Name of Applicant	Date of Application
10. Fred Dillon	1-29-57
(no form found, may have been registered without a form)	
11. Alton Ard	6-20-55
12. Lela Nettie Elam	6-20-55
(explained *inability* to read by poor glasses; 3rd grade education)	
13. Willie Jewell Ard	5-29-59
14. Altus Holmes	5-17-58
15. Jan Jewell Barnes	7-3-59
16. Nate Bud Hightower	7-5-55
17. Nolan Johnson	4-26-55

[fol. 1926] Walthall County #76

Part III

The following Negro applicants in Walthall County, who have been denied registration in Walthall County on the dates and in the manner indicated, are designated by name and number. The number is the number used in answer to Interrogatories 23 and 24 of defendant State of Mississippi. Specific experiences are detailed in Part I above, by number. If no number is listed, the judgment that the individual was deprived of his right to vote is based on an assessment of his application form in the light of the application forms in the county.

(a) Negroes denied the right to vote because of the interpretation test

7404	A. G. Tobert	5-27-55
74039	Mrs. Melverson Dunham	1-28-56
74031	Benton Simmons	4-15-58
74007	Sidney J. Ellzey	8-30-61
74025	Ruby Magee	8-30-61
	Wiley P. Walker	11-13-61

Miss Magee was also denied the right to vote by reason of the perfect form requirement because of an error in her precinct designation.

[fol. 1927] George Co. #77

Part I

A

The following Negro citizens of George County were not permitted to apply to register to vote, or were told they would have to know the names of political officials to register, or were told that the registrar could not register them until the Election Commissioners passed on their forms, or were rejected for registration because their interpretations did not satisfy the registrar. The events described below occurred at the Circuit Clerk's office in George County.

20026	About 1956 Dale-R Refused	He went to the Clerk's office shortly after Dale took office to see if Dale would let him register. He told Dale he was a veteran and wanted to register. Dale said no, he did not want to register colored people.
20005	1956-1959 Dale-R Refused	He attempted registration every year between 1956 and 1959 and was told by Mr. Dale the books were closed to colored people.
20030	1956-1960 Dale-R Refused	Attempted to register alone. Was told by Mr. Dale the books were closed.
20015	Late 1950s Dale-R Refused	Dale told him and his wife that they still were not set up for registering colored.
20026	1/6/62 Green-R Refused	He went to the Circuit Clerk's office with Willis Bryant, also a Negro, to attempt registration. He started to fill out an application form. After a while Green said it was close to dinner time, that Phillips should study more and then come back. He said he should learn the county officials before trying to register again.

20001	1/16/62 Green-R Refused	He and his wife returned to the Circuit Clerk's office. Green told them they had to know the names of the County Democratic Committee. His wife asked what their names were, but Green refused to tell her and said they shouldn't come back until they knew everything in the Attorney General's Digest of Mississippi Laws.

[fol. 1928]

20000	1/16/62 Green-R Refused	She and her husband returned to the Circuit Clerk's office. Green asked the names and functions of the Election Commissioners, and she told him. Green said she had gotten them confused with the Democratic County Committee. She asked their names but he said he had told them too much already. He said they shouldn't come back until they knew everything in the Digest of Mississippi Laws.
20035	1/6/62 Green-R Refused	He and his wife went to the Circuit Clerk's office to attempt registration about 11:30 a.m. Four or five white people were there and Green asked the Talberts to come back later. That afternoon he filled out an application form and interpreted Section 30. Green then questioned him about local officials. Green said that the members of the County Executive Board would pass on their applications and that they would learn if they were accepted about the middle of March.
20016	1/6/62 Green-R Refused	She and her husband went to this Circuit Clerk's office to attempt registration. She filled out an application form, interpreting Section 31

of the Constitution. Green asked if she knew the member of the Board of Supervisors from Beat 3. She did not, and he said their interpretation was correct but they couldn't be qualified voters until they knew their county officers and committee members. He said they should get the names from Attorney Bailey, or the County Superintendent.

20015 1/6/62 Green-R Refused — He and his wife went to the Circuit Clerk's office to attempt registration. He filled out a form and interpreted Section 70 of the Constitution. Green asked if Grant knew the names of the county officers and special committee members. Green said he thought that Grant should find out the names he didn't know from the County Superintendent or from Lawyer Bailey. He said Grant could come back when he knew the names.

[fol. 1929]

20034 1/6/62 Green-R Refused — She and her husband went to the Circuit Clerk's office about 11:30 a.m. to attempt registration. There were several others there and Green asked the Talberts to come back after lunch. After lunch she filled out an application form, interpreting Section 50. Green questioned them about local officials and told them that the voting committee would make sure they were qualified before registering them.

20000	1/13/62 Green-R Rejected	She and her husband went to the Circuit Clerk's office to attempt registration. She filled out a form, interpreting Section 56. Green said her election district was wrong and that she should just have repeated the text of Section 56. He questioned her about local officials.
20000	1/26/62 Green-R Refused	She and her husband went back to the Circuit Clerk's office. She filled out an application form and interpreted Section 73. Green said he would let the commission decide about the form, that he was through with her.
20001	1/26/62 Green-R Rejected	He and his wife went to the Circuit Clerk's office to attempt registration. Green refused to let them fill out forms at the same time. He filled out an application form and interpreted Section 34. Green said the only question he had was about the interpretation, that he would hear the results in March.
20042	1/30/62 Green-R Refused	She went to the Circuit Clerk's office to attempt registration. Green asked her various questions and then gave her an application form which she filled out, interpreting Section 56. She asked Green about one thing, but he said he couldn't help her. Green said her application looked alright and that someone else was supposed to look at it. He asked if the FBI had been to see her. Green also asked if she knew the county officials. He said she would hear from him. She did not.

[fol. 1930]

20016	2/3/62 Green-R Refused	She and her husband went again to the Circuit Clerk's office to attempt registration. Green asked if the FBI had been to see them. She filled out an application form, interpreting Section 30 of the Constitution. Green said he was satisfied with their interpretations. He asked Mr. Grant about N. G. Fairley and other local officials. Green said he would let Mr. Grant know what the Election Commissioners decided at their March 20th meeting.
20015	2/3/62 Green-R Refused	He and his wife returned to the Circuit Clerk's office to attempt registration. Green asked why they had started trying since he had come into office. Grant said he had been trying for several years. Grant filled out an application form and interpreted Section 73. Green then questioned him about local officials, and Grant showed him a list of local officials that they had compiled. Green said the election commissioners would consider applicants on March 20.
20015	3/23/62 Green-R Refused	He went alone to the Circuit Clerk's office to see if he could be registered. The election commissioners were meeting. He returned in the afternoon and was told he would have to get a lawyer or someone else with a typewriter to type out a statement that he wanted to register and file it with Green. The Commissioners would then consider the statement at its October meeting.

20001	3/26/62 Green Refused	He and his wife went to the Circuit Clerk's office to see if they had been registered. They saw 5 white people seated in Green's office. One woman there said Green was out, and they could wait in the hall. When Green came along, he said he would see if the committee had reached a decision. He went in the office. After about ten minutes he had not come back out, and Mrs. Alexander went in and said they would come back another time.
20001	4/2/62 Green-R Refused	He and his wife went in the Circuit Clerk's office with Mrs. Ernestine Talbert to see if they had been registered. Green asked why they didn't come back to meet the committee. He said the committee would meet again on June 4th.

[fol. 1931]

20034	4/2/62 Green-R Refused	She went to the Circuit Clerk's office with Robert and Doris Alexander to see if their applications had been accepted. Green said he had shown their applications to the Election Committee but they had only considered the Grants'. Green said the Election Committee wanted to talk with them and that he would neither approve nor disapprove their applications until the Election Commitee told him to.
20033	5/7/62 Green-R Refused	He filled out an application form and interpreted Section 56 of the Constitution, but Green refused to register him, saying he didn't think that was the interpretation.

20040	4/13/63 Green-R Delayed	He went to the Circuit Clerk's office alone and asked to fill out an application form. Green told him, things are different now, you have got to wait 14 days while I put your name in the paper; come back then.
20041	4/17/63 Green-R Delayed	He went alone to the Circuit Clerk's office to attempt to register. Green said that before he could atempt registration his name and address would have to be published in the paper for two weeks.
20039	4/20/63 Green-R Delayed	He went to the Circuit Clerk's office to attempt registration. Green told him that the law had changed, that his name and address must appear in the paper for two weeks, then he could come back and fill out a form.
20042	4/30/63 Green-R Rejected	She and her husband went to the Circuit Clerk's office to attempt registration. She filled out an application form, interpreting Section 33. Green said she hadn't done as well this time as the time before. In a pretrial conference in *U.S.* v. *Green*, he stated that she had been rejected because of her interpretation.

[fol. 1932]

B

The following Negro applicant was not permitted to register because the registrar questioned his good moral character:

20039	5/1/62 Green-R Rejected	He and another Negro, Lincoln Johnson, went to the Circuit Clerk's office to attempt registration. He filled out an application form and interpreted Section 33. Green said he was not satisfied. In May 1963 Green said in court, through counsel, that the rejection was based on moral character. Green never held a hearing on such charges.

20039	5/2/62 Green-R Reject	He went to the Circuit Clerk's office to attempt registration. He filled out an application form and interpreted Section 31. Green said that would not be the way he would interpret it. In May 1963 Green stated in court, through counsel, that the rejection was based on moral character. He never held a hearing on any such allegations.
20039	5/8/62 Green-R Reject	He went to the office to attempt registration. He filled out an application form and interpreted Section 70. Green said he didn't think he could pass him this time, that Talbert must interpret it to his satisfaction. In May 1963 Green stated in court, through counsel, that the rejection was based on moral character. No hearing was held.

C

The following Negroes was deterred from applying to register to vote and then was not registered to vote. This event occurred at the Circuit Clerk's office in George County.

20008	8/25/61 Green-R Rejected	She went to the Circuit Clerk's office to attempt registration. Her son was with her. Green questioned her about several local Negroes and asked if she belonged to the NAACP. Green said a lot of "Niggers" who work for white people and belong to the NAACP will lose their jobs. She filled out a form and interpreted Section 72, but Green failed to register her. She is the first Negro permitted to fill out a form by Eldred Green.

[fol. 1933]

21050	1/6/62 Green-R Deterred	Completed application form, was told that the election committee would meet in March and that she would be notified if found qualified to vote; never received notice. Went back to Clerk's office 4/2/62. Told she would have to meet with the Committee on June 14th. On April 25, 1962, she was notified that her contract was not being renewed; No reason was given.

[fol. 1934] George County #77

Part II

Application Forms

1. Number of Application Forms

Period includes forms from 5-21-60 to 4-8-63

White

Accepted	455
Rejected	11

Negro

Accepted	5
Rejected	30

2. Periods Covered by the Forms

The first form in George County is dated May 21, 1960. On April 13, 1962, the Government filed suit against the Circuit Clerk of George County and the State of Mississippi under 42 USC 1971a. On April 24, 1962, the United States District Court for the Southern District of Mississippi issued a Temporary Restraining Order in the cause which remains in force, pending further order of the Court, by agreement of counsel. On November 27, 1962, by order of the court following a motion under Rule 34, the Government photographed the voter registration records of George County. On April 8, 1963, an attorney of the

Department of Justice inspected the county's voter registration records since the date of photographing. The forms by race before and after the issuance of the Temporary Restraining Order are as follows:

[fol. 1935]

(a) 5-21-60—4-24-62 (Prior to Order)

	Accepted	Rejected
Whites	282	1*
Negroes	0	16

* It is not certain that this white applicant, (Oscar Bodie Walley,) now deceased, was rejected. However, his name was not found upon the registration books.

(b) 4-25-62—4-8-63 (Following Order)

	Accepted	Rejected
Whites	173	10
Negroes	5	14

[fol. 1936] Analysis of Forms *

(a) Selection of Constitutional Sections

(2) May 21, 1960 to April 24, 1962

(This involves all application forms prior to issuance of the Temporary Restraining Order)

Section	White	Negro	
1	0	1	
20	0	1	(form not retained by registrar)
30	186	5	
31	7	1	
33	7	0	
34	12	0	
35	20	1	
50	11	1	
56	5	2	
67	18	0	
70	1	1	
72	0	1	
73	12	2	
240	2	0	
blank and no section indicated			
	283	16	

* With the exception of section selection, analysis is restricted to those forms which have been photographed.

All Negro applicants were rejected.

All but one of the above white applicants was registered to vote.

66% of the white applicants during this period received Section 30 of the Constitution, "There Shall Be No Imprisonment for Debt," while only 31% of the Negroes were given that section. The first Negro to apply for registration under Circuit Clerk Green who became the first Negro ever to be permitted to fill out an application form [fol. 1937] in George County was assigned a section of the Constitution which Mr. Green never has given to a white person. (Mrs. Libbia Cooper; August 25, 1961; Section 72)

> Every bill which shall pass both houses shall be presented to the governor of the state. If he approve, he shall sign it; but if he does not approve, he shall return it, with his objections, to the house in which it originated, which shall enter the objections at large upon its journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which, likewise, it shall be reconsidered; and if approved by two-thirds of that house, it shall become a law; but in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within five days (Sundays excepted) after it has been presented to him, it shall become a law in like manner as if he had signed it, unless the legislature, by adjournment, prevented its return, in which case it shall be a law unless sent back within three days after the beginning of the next session of the legislature. No bill shall be approved when the legislature is not in session.

(2) 4-25-62—4-8-63

	Whites		Negroes	
	Accepted	Rejected	Accepted	Rejected
30	98	4	2	2
31	1	2	—	3
33	5	—	—	2
34	2	—	—	—
35	3	1	1	—
50	2	—	1	—
56	—	—	—	3
67	62	1	1	—
70	—	—	—	1
Several Sections	—	—	—	1
Blanks	—	2	—	2
	173	10	5	14

90% of the above white applicants received either Section 30, "There shall be no imprisonment for debt", or Section 67, "No bill shall be introduced into either house of the legislature during the last three days of the session". 26% of the Negro applicants during this period received one of those two sections.

[fol. 1938] (2) 4-25-62—4-8-63

The following are the ten white applicants who apparently were rejected for registration by Mr. Green during this period. Set forth in parenthesis following the date of application and name of each is the date of ultimate registration of the applicant and/or commentary upon his form.

[fol. 1939] 4-25-62 Roy Chapman
(no answer to item 20; later registered on April 30, 1962)

4-28-62 Sherry Ann Odom
(Stopped before reaching items 19 and 20)

5-8-62 Sadie Arella Chapman
(Registered later the same day)

5-18-62 Clayton E. Lawrence
(Later registered on May 26, 1962)

5-19-62 Margaret Azalea Harless
(Registered later the same day)

5-22-62 Vera Kate Milhous
(Item 20 not filled out; later registered on May 30, 1962)

5-22-62 Vera Kate Milhous
(Only items 18 and 19 were filled out; later registered on May 30, 1962)

5-31-62 James Bestor McKenzie
(Stopped before reaching items 19 and 20)

11-28-62 Mitchell J. Nicholson
(Item 18 blank; later registered on January 30, 1963)

2-27-63 Peggy Lou Mates
(Insufficient residence in the state)

b. Assistance to White Applicants

Patterned answers in the interpretations of white applicants to Section 30 of the Constitution are set out below:

Eleven white applicants, said essentially, you (or noone) can not be put in prison for debt:

[fol. 1940] Names	Addresses
Owen Stanley Welford (2-3-61)	Rt. 3 Lucedale (Same)
Loyd Allen Dale (1-31-61)	Lucedale (Same)
Carlie Lee Childress Jr. (10-25-60)	Central (Same)
Virginia Louise Eubanks (1-30-62)	Agricola (Same)
Patricia Ann Bang (1-30-62)	Salem Com. (Basin)
Irene Harmon (8-28-62)	Bexley (Same)
Henry Truman Rhymes (2-2-62)	Central (Same)
James T. Havard (7-18-62)	Cenral (Same)
Franklin Reeves (1-27-62)	(Central) Cross Rds.
Joseph Clinton Ivey Jr. (1-27-62)	Basin (Same)
Darwin W. Howell (1-19-62)	Davis (Same)

Fourteen white applicants responded simply by restating the section or varying it slightly to you cannot be imprisoned for debt.

	Addresses
Maurice C. Smith (3-23-61)	Rocky Creek (Same)
Thomas Austin Jones (6-17-60)	Agricola (Same)
Mary Kathleen Ables (5-19-62)	Agricola (Same)
William Dewey Eubanks (1-6-62)	Agricola (Same)
Ralph Howell (4-2-62)	(Davis)
Robert Lee Kirkwood (1-24-62)	Lucedale (Same)
Maybird Ledora Smith Grant (2-3-62)	Beat 3 (Basin)
Evelyn Jo Ann Tanner (1-29-62)	Lucedale (Same)
Mark Tanner (1-28-62)	Lucedale (Same)
Lauragene Havard (1-20-62)	Lucedale (Same)

[fol. 1941]

Names	Addresses
Havard C. Hempstead (9-24-62)	Lucedale (Same)
John K. Rymes (10-4-62)	Central (Same)
Pauline Havard (2-6-61)	Bexley (Same)
Ethel Roberts Havard (1-20-62)	Lucedale (Same)

Fifteen additional white applicants responded by saying (one) can't be put in prison for not paying his debts:

Names	Addresses
Roma Fern Rogers (10-4-60)	Central (Same)
Nancy A. Reeves (11-2-60)	Benndale (Same)
Irma Martha Claxton (12-19-61)	Rocky Creek (Same)
Sam Wilkins Thompson (1-26-61)	Rt. 2 Agricola (Same)
Sarah Elizabeth Havard (1-31-62)	Rocky Creek (Same)
Jo Ann Jones (2-19-62)	Lucedale (Same)
Winnie Mae Eckhoff (7-11-62)	Rocky Creek (Same)
Lelonee Tanner (1-31-62)	Lucedale (Same)
Luther Mason (1-31-62)	Bexley (Same)
Billy Edward Scott (2-9 62)	Basin (Same)
Nora Mae Brown (6-25-60)	Agricola (Same)
Mrs. Jim Brown (6-25-60)	Agricola (Same)
Charles B. Keel Jr. (4-1-61)	Beat 3 (Same)
Menunett Baxter (3-14-61)	Central (Same)
Fred Mays (1-12-61)	Lucedale (Same)

[fol. 1942] Twenty white applicants said essentially & or you, etc., can't be put in prison for owing a debt.

Names	Addresses
Corine Hudson (9-16-62)	Basin (Same)
Thellis Dixon (1-19-62)	Basin (Same)
Gladys Howell Peterson (9-13-62)	Central (Same)
Ola Herrington Williams (1-25-62)	Rocky Creek (Same)
Geneva Minnie Pierce (1-6-62)	Agricola (Same)
Georgia L. Talbert (1-27-62)	Howell Com. (Same)
Edna Hutcherson (1-29-62)	Lucedale (Same)
Otha Edward Miller Jr. (5-27-61)	Rt. 3 Lucedale (Same)
Edna Earl Atkins (8-28-61)	Rt. 3 Lucedale (Same)
William Louis Tanner (1-28-61)	Agricola (Same)
Mary Eloise Stewart (10-31-61)	Agricola (Same)
James Lawrence Taylor Jr. (10-20-61)	Lucedale (Same)

Names	Addresses
Norma Pauline Edwards (2-1-62)	Rt. 4 Lucedale (Rocky Creek)
Mary Evelyn Parker (1-29-62)	Central (Same)
Raymond Orlyn Foster (1-28-61)	Agricola (Same)
Ruby Jane Carlisle (1-18-61)	Rocky Creek (Same)
Fedderson C. Robinson (1-9-62)	Rt. 2 Lucedale (Same)
Geannean Mizell Johnson (1-18-62)	Benndale (Same)
Rita Elaine Bexley (2-28-62)	Bexley (Same)
Herbert Howard (4-30-62)	Bexley (Same)

[fol. 1943] Thirty additonal white applicants responded (one) can't be put in prison for owing anyone (or anybody or someone or somebody):

Names	Addresses
Moris Wayne Fallon (2-15-62)	Lucedale (Same)
Ida M. Nicholson (2-7-62)	Rocky Creek (Same)
Evelyn Marie Howell (2-1-62)	Number 3 (Basin)
Marie Thomley (1-30-62)	Rocky Creek (Same)
Shelby Jean Bufkin (2-9-61)	Rt. 2 (Agricola)
Mitsuko Hayden (10-24-61)	Ward (Same)
Alice Lea Dye (1-19-62)	Bexley (Same)
Roy Bill Pippins, Mrs. (1-22-62)	Central (Same)
Cartlon L. Fore (1-20-62)	Bendale (Same)
William Travis Havard (1-22-61)	Central (Same)
Claudia Hilbun (1-23-62)	Central (Same)
Bessie Marie Gartman (1-26-62)	Basin (Same)
Rebecca Ann Fore (1-26-62)	Bendale (Same)
Etta Mae Dossett (1-27-62)	Howell (Same)
Jeannette G. Alldredge (1-29-62)	Rocky Creek (Same)
Mazie Vernell Brown (3-23-62)	Ward (Ward)
Opal Maxine Cochran (3-21-62)	Central (Same)
Ruby Brewer Bradley (4-7-62)	Lucedale (Same)
Clifton Charles Ward (2-14-62)	Str Rt. Benndale (Same)
Oscar Stewart Hull (2-2-62)	Agricola (Same)
Laurence Elton Prescott (2-6-62)	Lucedale (Same)

[fol. 1944]

Jewel Dean Dickerson (1-30-62)	Bexley (Same)
Guy Edward Williams (3-8-61)	Benndale (Same)

Names	Addresses
Douglas L. Miller (1-24-62)	Rt. 2 Lucedale (Davis)
Willie Margil Brooks (2-7-61)	Basin (Same)
James C. Havard (2-1-62)	Lucedale (Same)
Bessie Dean (1-15-62)	Agricola (Same)
Jeannell Taylor (1-16-61)	George (Central)
Edward Earl Edwards (1-27-61)	Rocky Creek (Same)
Jessie Douglas Hobley (1-26-62)	George Co. (Bexley)

Instead of winding up with "owing anyone", six white applicants concluded their interpretations, "owing money" or "owing anyone money";

Addresses	
Clifton Doyle Dixon (1-30-61)	Salem (Same)
Bernard Harvard Green (2-4-61)	Bexley (Same)
Vernon Paul Miller (9-11-61)	Beat 2 Cooks Corner
Lyman Perry Mason (3-20-61)	(Pine Level)
Dago Maples (6-16-61)	Lucedale (Same)
Effinice Carter Havard (Mrs.)	Broom (Same)
(1-31-62)	Central (Same)

One white couple gave the same interpretation, "That no man or family should be put in jeopardy and accout of debt":

Names	Addresses
Mary E. Barnes (6-10-60)	Rocky Creek (Same)
Cletus Barnes (6-10-60)	Rocky Creek (Same)

[fol. 1945] The following pairs of persons had substantially identical answers to both items 19 and 20. The Howells were registered without writing any interpretations.

Names	Addresses
Clifton Doyle Dixon (1-30-61)	Salem (Same)
Hobley, Jessie Douglas (1-26-62)	George Co. (Bexley)
William E. Edwards (1-27-61)	Rocky Creek (Same)
Edna Earl Edwards (1-27-61)	Rocky Creek (Same)
Talley Murdock Howell (11-25-60)	Central (Same)
Ethel Louise Howell (11-26-60)	Central (Same)

Names	Addresses
Mary E. Barnes (6-10-60)	Rocky Creek (Same)
Cletus Barnes (6-10-60)	Rocky Creek (Same)
Mark Tanner (1-28-62)	Lucedale (Same)
Evelyn Jo Ann Tanner (1-29-62)	Lucedale (Same)
Carlie Lee Childress Jr. (10-25-60)	Central (Same)
Nancy A. Reeves (11-2-60)	Benndale (Same)
Helen Hankins Ellzey (1-14-61)	George (Basin)
Acciel E. Ellzey (1-14-61)	George (Basin)

[fol. 1946] Forms Filled Out Wholly or in Part by A Person Other than the Applicant

(1). Circuit Clerk Green filled out the form of one white applicant, Nancy A. Reeves, Bendale (11-2-60) and Carlie Lee Childress, Jr., white, Rt. 3, Lucedale, (10-25-60) after permitting his mother to fill out his application form for him and Acciel E. Ellzey, white, Rt. 3, Lucedale, (1-14-61) after permitting his wife to fill out his form for him.

The following white applicants had the county line of the oath slips on their application forms filled in by the same person, presumably Circuit Clerk Green, who filled in the county line in the notarization at the bottom of the form.

Edna Hutcherson	1-29-62
Eula Mae Anderson	10-2-61
Vernon Paul Miller	9-11-61
Pauline Havard	2-6-61
Owen Stanley Welford	2-3-61
Charlotte Perkins Butler	2-1-61
Charles Jessie Mason	1-31-61
Barbara Anne Mason	1-31-61
Ronald Hugh Daffin	1-18-61
Vallie Parker, Jr.	1-11-61
Laura Frances Rouse	11-9-60
Ernestine Powell Tanner	10-5-60
Lorine S. Shepard	9-27-60
Sara Elizabeth Barton	8-30-60
Chella Delores Goff	7-1-60

In the instance of Eula Mae Anderson neither the election district nor the county were written by the person who filled in the rest of the form exclusive of the notarization.

[fol. 1947] (2) Differences were noted between the handwriting on the answers to items 19 and 20 and the handwriting on the remainder of the form of Lucindy Hollimon (1-27-62).

(3) The applicant signature on the back of the applition form was not written by the same person as the applicant's name on the front on the forms of the following white applicants:

Genora Cox Brown	(1-27-61)
Joseph Dickerson	(2-1-62)
Mrs. Robert C. Howard	(2-10-62)
David Levi Davis	(1-28-61)
Sam Wilkins Thompson	(1-26-61)

(4) The answers to items 19 and 20 on the form of Donald Levi Davis (1-28-61) were not written by the writer of the handwriting on the front of that application form.

(5) The answers to items 18 through 20 and the election district and county on the oath slip of the application form of Edna Earl Edward were all written by the writer of the corresponding information on the form of William E. Edwards.

[fol. 1948] C. Grading

The following white applicants who were registered to vote wrote interpretations of Section 30 of the Mississippi Constitution, "There Shall Be No Imprisonment for Debt." Their interpretations as well as their answers to item 20, the duties and obligations of citizenship, are set forth below the name and date of application of each.

Name: John Cecil McMillan
Date: 7-12-61
19: "I thank that a Neorger should have 2 years in collage before voting because he don't under stand."
20: "under Standing of pepper & Government ship Bessing"

Name: Melba Luella Davis
Date: 1-29-62
19: "I think if any one any thin they saved may if and i believe in the constitution and i believe i would pay for acraim if coumme one."
20: "a good citizen is a proson i'm that good as the first and do not broke the laws of the state that is a good citizen of the state."

Name: Arthur Lamar Pipkins
Date: 9-30-61
19: "I believe it is sane one who has never been in prison and stays in good with the law and tries his best to be a good citizen for his country."
20: "A good citizen is one who tries to help country helps one another & does not drink."

Name: Ralph Dickerson
Date: 1-24-62
19: "well that is a god thing, because it was in prison I couldn't have live and be a citizen of the U. S. State."
20: "try the Best thing in his county and Don't get any thing that he know wont do him no good."

[fol. 1949]

Name: James Ellis Kline
Date: 10-9-61
19: "I unstnt, 30 cant be put in prison"
20: "obey law and pays debts"

Name: Jerry Gough
Date: 12-16-61
19: "I will pay my debts."
20: "I think a good citizen should always vote in all the elections."

Name: Roy Ford Mizell
Date: 1-23-62
19: "That the will no be no imprisment after death."
20: "a good citizen is a pearson how beliv in God and help his fellow man."

Name: Ernestine Williams
Date: 1-31-62
19: "There shall be no imprisonment for death is what section 30 means to me."
20: "A good citizen is a person who respects the law of the land."

Name: Mrs. Paul A. Shows
Date: 1-31-61
19: "I can't be put in the peniteninary."
20: "A good citizen is to obey the law and help to better his country."

Name: Julian D. Cochran
Date: 6-27-60
19: "They put you in jail but can't put you in prison."
20: "Good loyal citizens of the State and County by which you are Govern."

Mrs. Ernestine Tanner, white, (10-5-60) was registered to vote without being required to interpret a section of the Mississippi Constitution.

The following white citizens of George County were registered to vote although they failed to answer item 20, the duties and obligations of citizenship:

[fol. 1950]

Lorie Robinson Nelson	(2-14-61)
C. E. Thomas	(8-11-61)
Charles B. Keel	(4-1-61)
Mary N. Keel	(4-1-61)

[fol. 1951] George County #77

Part III

The Negro citizens herein have been denied voter registration after filling out application forms. Set forth for each such person are the number assigned him should he have been interviewed by the Government, his name and the date of his registration attempt.

(a) The following Negroes were denied registration on the basis of their interpretations of a section of the Mississippi Constitution:

20042	Inez Larcenia Wilson	4-30-62
20019	Lincoln Johnson	5-1-62
20019	Lincoln Johnson	5-2-62
20033	Clarence Mathew Talbert	5-7-62
20019	Lincoln Johnson	5-11-62

(b) Willie Talbert, a Negro, 20039, was denied registration because of the good moral character requirement on May 1, 1962; May 2, 1962; and May 8, 1962. He was not informed that this was the reason for his being denied registration.

(c) The following Negroes were denied registration because of the perfect form requirement:

20001	Robert F. Alexander, Jr.	1-13-62
20036	James Talbert, Jr.	4-28-62

[fols. 1952-2032] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3312

UNITED STATES OF AMERICA, Plaintiff,

v.

STATE OF MISSISSIPPI, ET AL, Defendants.

ORDER REDESIGNATING THREE-JUDGE COURT—September 12, 1963

The Honorable John Minor Wisdom, United States Circuit Judge, having been named by me, as Chief Judge, to serve as a member of a three-judge district court to hear the above matter, and the said Honorable John Minor Wisdom having requested to be relieved, he is hereby relieved from further assignment as a member of the Court.

I, Elbert P. Tuttle, Chief Judge of the Fifth Circuit, hereby designate the Honorable Ben F. Cameron, United States Circuit Judge, as a member of said Court in the place of Judge Wisdom. The Court is hereby redesignated accordingly.

This 12 day of September, 1963.

Elbert P. Tuttle, Chief Judge, Fifth Circuit.

[fol. 2033] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

Oct. 12, 1963.

LETTER REQUESTING TRIAL DATE—Filed October 14, 1963

Honorable Ben F. Cameron, Circuit Judge, United States Court of Appeals for the Fifth Circuit, Meridian, Mississippi.

Honorable John R. Brown, Circuit Judge, United States Court of Appeals for the Fifth Circuit, Houston, Texas.

Honorable William Harold Cox, Chief Judge, United States District Court for the Southern District of Mississippi, Jackson, Mississippi.

Dear Judges Cameron, Brown and Cox:

I am writing to you about *United States* v. *Mississippi* (C.A. No. 3312), the three-judge court case involving the constitutionality of certain sections of the Mississippi constitution and statutes dealing with voter registration.

Since the purpose of this letter is to request a firm trial date in the near future, I shall set forth briefly the chronological history of this case to date.

August 28, 1962

The United States filed its Complaint.

March 8, 1963

The various motions of the defendants were argued befor the three-judge court. The Court's rulings were as follows:

[fol. 2034] (1) The defendants' motions to strike and motion for more definite statements were denied.

(2) The defendants' motion to stay—doctrine of abstention, was held in abeyance for "decision very shortly", but deferring action on this motion was not to interfere with discovery or the filing of the answers.

(3) The defendants' motions to dismiss for lack of jurisdiction of the subject matter was taken with the case because the Court felt it went to the merits.

(4) The defendants' motion to quash the three-judge court as to certain matters was taken with the case for determination on the merits of the case.

(5) The motion to strike the third claim of the Complaint was taken with the case.

(6) The motion for severance on behalf of individual circuit clerks and motions for separate trial of claims was deferred until after discovery was completed, but the Court stated that arrangements would be made to insure that none of the registrars would be kept in attendance at the trial unnecessarily.

[fol. 2035] (7) The Government's motion for production of records under Rule 34 was granted.

(8) The defendants were given 30 days from March 12 in which to file their answers.

The Court emphasized the importance of going forward with discovery. Judge Brown stated, after announcing the Court's decision, "that the discovery should go forward with vigor" and that the Court would then make disposition as to the trial date.

May 13, 1963

The answers of the defendants were filed.

May 17, 1963

Defendant State of Mississippi served interrogatories on the plaintiff.

June 10, 1963

Defendant Smith, registrar of voters of Coahoma County, Mississippi, served interrogatories on the plaintiff.

June 20, 1963

Defendant Easley, registrar of voters of Claiborne County, Mississippi, served interrogatories on the plaintiff.

[fol. 2036] July 8, 1963

Defendant Wiggins, registrar of voters of Lowndes County, Mississippi, served interrogatories on the plaintiff.

July 30, 1963

On May 20, 1963, and again on July 19, 1963, the defendant State of Mississippi filed supplemental briefs in support of its motion to dismiss. On July 30, the defendant State moved the Court to dispose of the motion to dismiss after oral argument and prior to consideration of the merits.

September 1, 1963

The United States filed its Answers to Interrogatories. The answers cover the factual basis to support the plaintiff's claims for relief. The answers to the interrogatories are contained in seven volumes. These volumes contain the following material:

1. Names of Persons Contacted Names of Agents and Attorneys

This volume contains the names, race, type of statement given, educational level and other background information on each person contacted by agents of the plaintiff in connection with this cause and the names and addresses of agents of the plaintiff who contacted or interviewed any one in connection with this cause.

2. Statistics Census-Registration-Voting 1890-1962

This volume covers State-wide registration statistics by county and by race, with dates for the following specific dates: 1890, 1899, 1954, 1955, 1960, 1962.

[fol. 2037] 3. Purpose of Laws 1890, 1954, 1960, 1962 Decrease in Negro Registration 1890-1954

This volume contains the factual basis showing (1) the racially discriminatory purpose of the registration laws under attack, (2) white primary practices in Mississippi, and (3) the decrease in Negro registration since 1890.

4. Comparison of Education for Negroes and White Persons, 1890-1963

This volume contains the facts which show that in Mississippi public education provided for Negroes was and is inferior to the public education provided for white persons.

5. Answers Appendix A

This volume contains the answers to various interrogatories which did not require great detail. In addition, the Appendix to this volume details the factual basis and methods by which white political supremacy was established and maintained in Mississippi prior to the implementation of the constitutional interpretation test in March 1955.

6&7. Appendix B 1 & 2

These two volumes include, by county, factual data since March 24, 1955, the date of implementing the interpretation test, that Negroes have not been permitted to register since the adoption of the test. In addition, an analysis of the application forms of certain counties shows non-uniform administration of the voting laws [fol. 2038] under attack, favored treatment to white persons in administering these laws, and the unlimited discretion vested in the registrars to administer this test.

September 13, 1963

The United States filed its notice to take the oral depositions of thirteen registrars and one deputy registrar in certain Mississippi counties. Prior to this time the United States had been negotiating with the lawyers for the defendants to set dates and places for taking the depositions of the defendant registrar without notice.

We were able to make arrangements and had set dates to take the depositions of two of the defendant registrars. The defendants moved to quash the taking of depositions on the grounds that it placed a hardship on them and that the depositions should not be taken until jurisdiction of the Court had been determined. After an oral argument, Judge

Cox entered an order staying the depositions until further order of the Court "to enable the Court as re-constituted on September 12, 1963, to organize and become familiar with the issues and decide at a conference to be called by the three judges just what issues will be presented to and decided by the Court so as to make more apparent to the parties just what testimony may be considered and desirable and necessary." Thus, no depositions have been taken.

In view of the difficulty and delay which we have experienced and undoubtedly will experience in pressing for further discovery by way of depositions or otherwise, we have concluded to forego any further depositions except for those absolutely necessary because witnesses are beyond the reach of the Court's subpoena power and will not voluntarily make themselves available for trial. As to those limited depositions, we will notice and take them after the case is set for trial at a specific time.

[fol. 2039] The issues which are involved in this case are:

1. Suit Against the State—

   The legal issue is, in this attack on the constitutionality of Mississippi voting laws whether the State, by virtue of the constitutional attack on the voting law and by virtue of the Civil Rights Act of 1960 (Section 601b), which permits joining the State as a defendant, whether the State is a proper party in this litigation. As indicated, the defendant State has filed supplemental briefs on this issue. We will file a short reply to their briefs by November 1, 1963.

2. Constitutionality of Certain Laws—

   The laws which are attacked as being invalid in this case are:

   a. *Section 244 of the Mississippi* Const., as amended (and its implementing legislation)—provides for the constitutional interpretation test and for the duties and obligation test.

   b. *Section 241-A of the Mississippi Constitution,* adopted in 1960 (and its implementing legislation)—

provides for a good moral character test as a prerequisite to registration.

c. *Section 3209.6 of the Mississippi Code*, as amended in 1960—permits the destruction of Sworn Written Application Forms for Registration by local registrars.

[fol. 2040] d. *House Bill 900*, 1962 (amended Section 3212 of the Mississippi Code)—directed that the statute which required application forms to be completed by applicants without assistance was mandatory and that all blanks on the application must be "properly and responsively" completed and that the oath, and the application form must be signed separately by the applicant.

e. *House Bill 903*, 1962—provides that applicants must return to the registrar's office after the waiting period for publication, to determine whether he has passed or failed registration. This Bill also provides that the registrar may not tell applicants who fail to qualify for registration the reasons for failure because that might constitute assistance on a subsequent application.

f. *House Bills 822 and 904*, 1962—which provide the procedure for publication of names of applicants for registration in the newspaper and establishes the right of any qualified voter to challenge the qualifications of any applicant. This statute also sets up an administrative procedure to be followed in the event an applicant is challenged.

3. The Relief—

a. What should be the specific terms of the injunction. This will involve a determination as to the qualifications and a standards to be required for registration in the event of a declaration of unconstitutionality.

[fol. 2041] b. In the event of a finding of a pattern and practice of discrimination there is an issue to the effect of such a finding and the procedure to be used in the event of invocation of the referee provisions of the Civil Rights Act of 1960, 42 U.S.C. 1971(c).

These items—suit against the State, the constitutionality of the specified Mississippi laws, and the relief—are, I believe, a fair statement of the issues which are involved in this case.

To facilitate the trial in this case, the United States is preparing a list of exhibits with exhibit numbers which we plan to introduce in evidence. This list will be sent to the defendants by November 4, 1963, and the documents themselves will be made available to the defendants in Jackson, at the United States Attorney's office beginning that day. The exhibit list will contain columns so that the defendants, after they have had an opportunity to look at the exhibits, may note any questions as to the authenticity of any document. This way we can identify the document about which there is no dispute as to authenticity. Proof of authenticity of these documents would otherwise take a great deal of time at the trial.

In addition, the United States will file, by November 4, 1963, supplementary answers to the interrogatories which were filed on September 1. This will bring up to date the material which we have previously set out in those answers.

Finally, this case deserves the immediate attention of this Court. It involves the constitutionality of Mississippi voting laws. The United States claims these laws are invalid because their purpose and effect is to deprive Negroes of the right to vote without distinction of race or color. The rights involved are very important. As the Court of Appeals recently stated in *United States* v. *Atkins* (C.A. 5 Sept. 30, 1963):

> [fols. 2042-2053] The right to vote is one of the most important and powerful privileges which our democratic form of government has to offer. Although states may regulate this right, they are subject to close judicial scrutiny when doing so and are limited by the Fifteenth Amendment in addition to the Fourteenth.

Accordingly, we believe that the matter of going forward with the trial and decision in this case is of extreme urgency.

I have sent copies of this letter to the attorneys for the defendants.

Sincerely, John Doar, First Assistant Civil Rights Division

[fol. 2054] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

UNITED STATES DISTRICT COURT, OFFICE OF THE CLERK, SOUTHERN DISTRICT OF MISSISSIPPI

Jackson, Mississippi
October 21, 1963

NOTICE OF HEARING ON ALL MOTIONS—Filed October 22, 1963

Hon. Robert F. Kennedy, Attorney General of the United States of America, Washington, D. C.

Hon. Robert E. Hauberg, United States Attorney, Post Office Box 2091, Jackson, Mississippi.

Hon. Ross R. Barnett, Governor of the State of Mississippi, Jackson, Mississippi.

Hon. Joe T. Patterson, Attorney General of the State of Mississippi, Jackson, Mississippi.

Hon. Dugas Shands, Jackson, Mississippi, Hon. Charles Clark, Jackson, Mississippi, Hon. T. F. Badon, Liberty, Mississippi, Hon. Joe T. Drake, Port Gibson, Mississippi, Hon. Leon Porter, Clarksdale, Mississippi, Hon. Aubrey Bell, Greenwood, Mississippi, Hon. W. G. Burgin, Jr., Columbus, Mississippi, Hon. B. D. Statham, Magnolia, Mississippi, Hon. Semmes Luckett, Clarksdale, Mississippi, Hon. Chester Curtis, Clarksdale, Mississippi, Hon. Hardy Lott, Greenwood, Mississippi, Hon. W. H. Jolly, Columbus, Mississippi, Hon. Joe G. Gordon, Liberty, Mississippi.

Gentlemen:

Civil Action No. 3312

Re: UNITED STATES OF AMERICA,

vs.

JACKSON DIVISION, STATE OF MISSISSIPPI; ROSS R. BARNETT, JOE T. PATTERSON, HEBER A. LANDER, AS MEMBERS OF THE MISSISSIPPI STATE BOARD OF ELECTION COMMISSIONERS; H. K. WHITTINGTON, CIRCUIT CLERK AND REGISTAR OF AMITE COUNTY; MRS. PAULINE EASLEY, CIRCUIT CLERK AND REGISTRAR OF CLAIBORNE COUNTY; J. W. SMITH, CIRCUIT CLERK AND REGISTRAR OF COAHOMA COUNTY; MRS. MARTHA TURNER LAMB, CIRCUIT CLERK AND REGISTRAR OF LE FLORE COUNTY, T. E. WIGGINS, CIRCUIT CLERK AND REGISTRAR OF LOWNDES COUNTY; WENDELL R. HOLMES, CIRCUIT CLERK AND REGISTRAR OF PIKE COUNTY.

Please Take Notice that the above-entitled case has [fols. 2055-2081] been set for the hearing of all motions now pending and for such other matters as either side may desire to present to the Court and for such matters as the Court may desire to present, at Meridian, Mississippi, on Wednesday, October 30, 1963, at nine-thirty (9:30) o'clock, A.M.

Sincerely, Loryce E. Wharton, Clerk, United States District Court, Southern District of Mississippi.
By: E. Mathison, Deputy Clerk.

[fol. 2082] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3312

[Title omitted]

SUPPLEMENTAL ANSWERS TO INTERROGATORIES OF STATE OF MISSISSIPPI; MRS. PAULINE EASLEY, CIRCUIT CLERK AND REGISTRAR OF CLAIBORNE COUNTY; J. W. SMITH, CIRCUIT CLERK AND REGISTRAR OF COAHOMA COUNTY; T. E. WIGGINS, CIRCUIT CLERK AND REGISTRAR OF LOWNDES COUNTY —Filed October 30, 1963.

Answers
Appendix A

[fol. 2083] SUPPLEMENTAL ANSWER TO INTERROGATORY No. 11, WIGGINS

(Volume: Answers p. 37-38)

In this supplemental answer to this interrogatory, the identifying number assigned to the persons in the Supplemental List of Persons Contacted is used instead of the persons's name, address, age and education. The place is always the office of the Circuit Clerk, Lowndes County Courthouse, Columbus, Mississippi. Mr. Wiggins was present and registered each of the persons listed below, unless the contrary is indicated. Other persons present with such information as plaintiff has about them are set forth in the list. Unless otherwise indicated, all such persons are white.

The persons with the information desired are listed as follows:

Number	Occurrence	Persons Present	Nature of the Opportunity
44531a	7/8/55	Emmit McIlwain, Jr Artesia, Miss.	Allowed to register without interpreting constitution or giving understanding of duties of a citizen.
44534a	4/6/57	Shirley Hildreth, his wife	They were allowed to complete this application at the same time.
44535a	April, 1959	Grady R. Ussery, her husband and an unknown female clerk.	She and husband allowed to register at the same time.
[fol. 2084]			
44540 & 44541	1/13/56	Mrs. Poole, a clerk	They were allowed to complete forms at the same time, and asked each other questions.
44543 & 44544	1/24/56	Two female clerks	They were allowed to complete form at the same time; she explained the meaning of some of the words on the application form to him.

Number	Occurrence	Persons Present	Nature of the Opportunity
44546	2/1/58	A female clerk	Was told her precinct.
44548	4/22/55		Was told her precinct.
44550	3/18/58		Was told his precinct.
44552	2/29/60	Employees of office	Mr. Wiggins clarified some questions for him.
44556	12/24/58	Zeb Nabocs, her husband	She and husband filled out applications at the same time; they helped each other with some of the questions.
44563	1/31/57		Is registered to vote but never went to the Lowndes County Courthouse to register.
44564	1/25/58	Lady Clerk	The clerk told her where to sign the form; what the precinct was, called an omission she had to her attention. She was registered despite the omission.
[fol. 2085]			
44566	1/26/57		She was registered although she copied her answers from material printed or typed on the form. She was told the precinct.
44567	1/31/58	His wife	He and his wife allowed to register at the same time.
44568	6/8/59	His wife	He and his wife allowed to register at the same time.
44572	4/29/55	Her husband and a female clerk	She was not required to complete an application form and her husband signed the registration book for her.

Number	Occurrence	Persons Present	Nature of the Opportunity
44573	6/3/55	Not Known	He was registered to vote despite the fact that he cannot read or write.
44574	6/20/59	Mrs. Clarence Dale of Caledonia	She was registered despite the fact that she did not know her precinct
44575	3/19/60		He was registered despite the fact that he does not know his precinct.
44579	6/15/56	His wife	He and his wife allowed to complete application forms simultaneously.
[fol. 2086]			
44584 & 44585	In 1960		Allowed to register at the same time; he was told his precinct.
44592	1/27/61		The section of the constitution was read aloud to him before he copied it.
44593 & 44594	1/28/61		Allowed to register at same time.
44596	3/10/61	His wife	He and his wife allowed to register at the same time; he was told what to put on his application by Mr. Wiggins.
44599	6/29/61	Her daughter, Betty Jean, and a female clerk who helped process her.	Mr. Wiggins talked to her about answering the application form and told her "citizens had to know about the law."
44600	9/15/61	Female clerk who processed her registration.	She was told to put her husband's name in the answer to item 13 by the female clerk.
44602	1/9/62		Assisted in answering question 19.
44604	1/13/62		Assisted in answering question 19.

Number	Occurrence	Persons Present	Nature of the Opportunity
44605	3/2/62	Woman clerk	He was finished answer to question on his application and was assisted in answering question 19 and 20 by the woman clerk.
[fol. 2097]			
44606	4/5/62	A female clerk	Was given assistance by the female clerk in answering question 19 and 20.
44610	12/21/62	A female clerk	He was assisted in his answer to question 20 by the female clerk.
44611	1/12/63	A female clerk	He was allowed to pick the section he wanted to interpret.
44615	1/19/63	A female clerk	She and her husband allowed to fill out their forms at the same time; the clerk told her where to put some of her answers; she was allowed to choose her own section.
44616	1/28/63		Mr. Wiggins aided him in answering question 20; he was also told his precinct.
44618	1/29/63	Mr. Boswell	She assisted him in answering question 20, and told him his precinct.
44620	2/4/63		Assisted by Mr. Wiggins in completing the form
44627	1/9/63		Aided by Wiggins in completing his application.
44628	1/14/63	Royall Brock his brother	Aided by Wiggins in answering question on the form, and showed the questions he had omitted.

[fol. 2088]

Number	Occurrence	Persons Present	Nature of the Opportunity
44630	1/31/63	A female clerk	Aided by Mr. Wiggins in answering question 19.
44633	1/2/63		He was allowed to choose his own constitutional section.

[fol. 2089] SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 12, WIGGINS

(Volume: Answers p. 39)

In this supplemental answer to this interrogatory, the identifying number assigned to the person in the Supplemental List of Persons Contacted is used instead of the person's name, address, age, and education. Each of the persons listed herein was contacted by or on behalf of the plaintiff. On the basis of this contact, the educational level of the person, the occupational status of the person, and an assessment of his ability to read and write, the plaintiff has concluded as to each of these persons that he is or was no better qualified to register to vote than those Negro citizens listed in the Answer to Interrogatory No. 11, Wiggins (Volume: Answers p. 37-38). The place of said registration for each of the persons listed below is the office of the Circuit Clerk in the Lowndes County Courthouse in Columbus, Mississippi. Mr. Wiggins was present and registered each of the persons listed below, unless the contrary is indicated. Other persons present with such information as plaintiff has about them are set forth in the list. Unless otherwise indicated, all such persons are believed to be white.

The persons with the information desired are listed as follows:

[fol. 2090]

Number	Date Registered	Persons Present
44530a	4-9-55	Not known.
44531a	7-8-55	Emmett McIllwain, Jr., Artesia, Miss.
44532a	3-27-58	Unknown white male was in office, but left.
44534a	4-6-57	Shirley Hildreth, his wife.
44535a	April, 1959	Grady Ralph Vasery, her husband, and an unknown female clerk.
44542	6-30-55	—
44543	1-24-56	Johnnie Edburn Nichols, her husband; two female clerks.
44544	1-24-56	Gladys Nichols, his wife; two female clerks.
44546	2-1-58	A woman clerk.
44547	8-22-59	Clerks in the office.
44548	4-22-55	—
44550	3-18-58	—

Number	Date Registered	Persons Present
44551	1-23-60	A female clerk.
44552	2-29-60	Employees of office.
44554	1-7-56	——
44555	2-27-56	Possibly a woman clerk waited on her.
44556	12-24-58	Zeb Nabor, her husband.
44557	6-27-56	——
44558	1-22-58	Wiggins not there; a female secretary about 30 at the time.
44559	1-28-58	
[fol. 2091]		
44560	1-29-59	Female clerk; other people registered at the same time she did.
44563	1-31-57	Not known.
44564	1-25-58	Wiggins not there; a lady clerk processed her.
44565	1-12-59	——
44566	1-26-57	——
44567	1-31-58	His wife registered with him.
44568	6-8-59	His wife registered with him.
44571	1-20-60	——
44572	4-29-55	Her husband accompanied her; a female clerk waited on them.
44573	6-3-55	Not known.
44574	6-20-59	Mrs. Clarence Dale, of Caledonia.
44577	1-31-57	——
44587	12-31-60	Not known.
44589	1-17-61	Her husband, Charles B. Ray, and a woman clerk.
44592	1-27-61	——
44596	3-10-61	His wife.
44597	6-5-61	——
44599	6-29-61	Her daughter, Betty Jean; a female clerk who helped process her.
44600	9-15-61	A female clerk processed her registration.
44601	7-11-61	A middle-aged female clerk.
44603	1-13-62	A female clerk.
[fol. 2092]		
44605	3-2-62	A female clerk.
44606	4-5-62	A female clerk.
44607	9-28-62	Mrs. Shannon's daughter, Mrs. Leon McInnes; and Laura Bazzell, a clerk in the office.
44609	1-18-63	A female clerk.
44613	1-16-63	Not known.
44614	1-19-63	Not known.
44616	1-28-63	——
44620	2-4-63	——
44623	1-30-62	Not known.
44624	1-30-62	——
44628	1-14-63	Bagoll Brock, his brother.
44629	1-21-63	Not known.
44620	1-31-63	A female clerk.

[fol. 2093] SUPPLEMENTAL ANSWER TO INTERROGATORY No. 8, EASLEY

(Volume: Answers p. 40)

In about 1959, Barbara Jean Brown, a white citizen of Claiborne County, residing at Concord Trailer Camp, Natchez, Mississippi did not know her election district at the time she registered and yet she was registered by Mrs. Easley, who was the only other person present at the time.

On January 26, 1963, Patricia Hins Neil, accompanied by her father, E. L. Hines, was registered to vote by Mrs. Easley and was told her election district by Mrs. Easley.

[fol. 2094] SUPPLEMENTAL ANSWER TO INTERROGATORY No. 15, EASLEY

(Volume: Answers p. 45)

Barbara J. Brown, white, was allowed to have in front of her as she interpreted, the book containing the constitutional section she was to interpret. (See Addition To Answer to Interrogatory No. 8, Easley hereof for details.)

Barbara J. Brown was registered without knowing her election district. (See Addition to Answers To Interrogatory No. 8, Easley hereof for full details.)

Patricia Hines Neil was told her election district by Mrs. Easley. (See Addition to Answer To Interrogatory No. 8, Easley hereof for full details.)

Everett R. Scurlock, white, grant Gulf, Mississippi, on October 27, 1961 was registered to vote by telling the woman whom he assumed to be the registrar of voter his name, age, residence and occupation and did not have to fill out an application form. He was accompanied by John Gladjo and L. E. Moore, both white.

L. E. Moore, white, General Delivery, Port Gibson, Mississippi, on Oetober 27, 1961 was registered to vote by telling the woman who registered him his name, age, residence and other questions. He was not required to fill out a form. He was accompanied by John Lewis or John Gladjo and Everett R. Scurlock, both of whom are white.

[fol. 2095] Edward M. Hudson, white 322 4th Street McComb, Mississippi was allowed to pick out the constitutional section that he interpreted. He registered by himself on June 24, 1959 by a white woman.

Martha Betty Davenport, white, Route 2, Box 97 A, Port Gibson, Mississippi, had difficulty in interpreting the section of the constitution she was assigned and told Mrs. Easley that she did not understand what it meant. Mrs. Easley told her what to write down for the interpretation. She was accompanied by her son Billy Ray Davenport.

Martha Betty Davenport, above, told Mrs. Easley that she did not understand Question 20 concerning the duties and obligations of citizenship. Mrs. Easley told her what to write down for an answer.

Martha Betty Davenport, above, and her son, Billy Ray Davenport, were allowed to fill out application forms at the same time, and one was not required to wait until the other was finished.

Negro registration experiences of which Plaintiff presently is aware have already been provided to the defendants and indicate that many of them have had great difficulty in becoming registered to vote even after completing an application form, were delayed or refused registration and were not given any of the opportunities listed above for the white applicants.

[fol. 2096] Answer to Interrogatory 16

(Volume: Answers p. 46)

Plaintiff is presently aware of the following white persons listed below who have been allowed or permitted by this defendant to register to vote who were or are no better qualified than Negro citizens of Claiborne County who have been denied the right to register to vote. Also there are Negro citizens in Claiborne County who have been denied registration whose educational level is equal to or substantially higher than other white persons who are registered (See Answer to Interrogatory No. 13 a, b, c, c, and Appendix B Part I pp 39-1 to 39-6). The date on which these persons below were allowed to register is

listed following the name and address. Plaintiff basis its belief on interviews and/or on the low level of formal education of some of the people.

Bufkin, Mrs. Jock D.	Hermanville, Mississippi	1-31-61
Davenport, Martha Betty	Route 2, Lake Claiborne	8-25-62

(See Additional Answer to Interrogatory 15, above for addition details.)

Gladjo, Edmond E.	Port Gibson, Mississippi	6-3-61
Moore, L. E.	Port Gibson, Mississippi	10-27-61

(See Additional Answer to Interrogatory, above, for more details)

Suenlock, Everett	Ground Gulf	10-27-61

(See Additional Answer to Interrogatory above, for more details)

Weller, L. T.	810 Farmer Street Port Gibson	1-27-62

[fol. 2097] DISTRICT OF COLUMBIA:

Before me, the undersigned Notary Public, personally came and appeared D. Robert Owen, Attorney, United States Department of Justice, who being by me first duly sworn, did depose and say:

That he is the person who has signed the above and foregoing Answers to Interrogatories of State of Mississippi, J. W. Smith, Mrs. Pauline Easley, and T. E. Wiggins, in his capacity as Attorney for the United States Department of Justice and that the answers given over his signature are true and correct to the best of his knowledge.

D. Robert Owen.

Sworn to and subscribed before me this 29th day of October, 1963.

Louis E. McDonough, Notary Public.

My Commission Expires July 31, 1967.

[fol. 2098] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3312

[Title omitted]

SUPPLEMENTAL ANSWERS TO INTERROGATORIES OF STATE OF MISSISSIPPI; MRS. PAULINE EASLEY, CIRCUIT CLERK AND REGISTRAR OF CLAIBORNE COUNTY; J. W. SMITH, CIRCUIT CLERK AND REGISTRAR OF COAHOMA COUNTY; T. E. WIGGINS; CIRCUIT CLERK AND REGISTRAR OF LOWNDES COUNTY —Filed October 30, 1963.

Appendix B
1 & 2

[fol. 2099] Coahoma #2

Part I

A. (Continued)

14062 and 14063	9-26-63 Delay Smith-R	They went together to register to vote and were required to apply one at a time. The Registrar and a lady waited on them. No one else was there to register while they were there.

[fol. 2100] Coahoma County #2

Part II (Supplemental)

Supplemental Answers to Part C on Page 2-8

Additional Standard Answers to Question 20 by White Persons in 1962

Name & Date of Application	Answer
Keck, Gertrude E. 1-3-62	1. To abide by all the laws of Miss. & government of the United States. 2. Duty to vote at all elections 3. Pay all taxes.
Graham, Evelyn Pauline 1-19-62	Register to vote, pay taxes, and be a law abiding citizen.
Amerson, John T. 1-22-62	Pay my taxes and vote in all elections and be a lawbiding citizen
Haire, Luther 1-23-62	Pay your taxes vote in all elections and be a good citizen abide by the law.
Lilly, Maurine G. 1-29-62	Pay your taxes & vote in all elections. Take an interest in all community affairs.

Name & Date of Application	Answer
Green, D. H. 1-29-62	To exercise the right to register and vote in all elections of the city, county & state and be a law abiding citizen.
White, Mary Ethel 1-29-62 (Mrs. Hal)	Pay your taxes, vote and be a law abiding citizen.
Gordon, Roy Mrs. 1-30-62	We should be a good citizen vote in all elections. Be law abiding citizen.
Dennis, Dorothy Ann 1-30-62	Vote and pay all taxes and be a law abiding citizen.
Sells, Kent Mrs. 1-30-62	Pay all taxes vote in all elections. Be a law abiding citizen.
[fol. 2101]	
Barkley, Hugh A. 1-31-62	A person to be a good citizen should abide by the laws of the state, pay taxes, and vote in all elections.
Mayonr, Irma Lee McCool 1-31-62 (Mrs. R. L.)	To be a citizen of the United States you must reside in the state, you must pay your poll taxes. Vote in all elections, be a law abiding citizen.
Gaines, Gracie Hudson 1-31-62 (Mrs. Joseph W.)	Pay all taxes and vote in all elections make a good citizen.
Young, William Edmond Jr. 2-1-62	It is my understanding that the duties and obligations of citizenship of the constitutional form of government include: Must be a law abiding citizen, Must pay all taxes, must vote in all elections.
McFarland, Prentis H. 3-1-62	I think I should respect the law and don't do anything that would be against the law and pay all taxes and vote in all elections.

Name & Date of Application	Answer
McGinnis, Gladys T. 3-12-62 (Mrs. John)	Pay all taxes vote in all elections and be a law abiding citizen.
McDonald, Inez C. Mrs. 3-13-62	To vote in all elections pay all taxes protect all property in our city be law abiding citizen.
Wilkins, Clarence Charley 6-28-62	Pay all taxes vote in all elections abide by the laws of our county and State.

[fol. 2102] Desoto County #3

Part II

Application Forms

1. Number of Application Forms and Period They Cover

On May 23, 1963, 627 DeSoto County application forms were photographed. The rejected forms of two Negroes are dated April 8 and September 8, 1960. The remaining forms cover the period from September 1, 1961 to April 18, 1963.

The forms executed prior to June 1, 1962 bear no indication as to whether the applicants were accepted or rejected. Of this group the forms of 238 persons whose names appear in the Registration Books were counted as accepted and the forms of 9 persons whose names do not so appear were counted as rejected.

The breakdown of forms is as follows:

	Accepted	Rejected
White	567	26
Negro	2	9
Race Unknown	0	23

2. Analysis of Forms *

a. Selection of Sections of the Constitution

Negro applicants were given 1 of 8 lengthy or difficult constitutional sections which were given to none or rela- [fol. 2103] tively few white applicants:

Section	White	Negro	No. of Lines
29	12	3	3
59	0	1	10
84	3	1	3
108	9	1	2
129	0	1	3½
142	0	2	3½
147	0	1	7½
198	0	1	2

Numerous white applicants were given relatively short or easy sections which no Negroes received:

Section	No. of Whites	No. of Lines
30	42	1
50	62	2½
67	25	1½
74	29	2
75	52	2
83	62	2
92	39	2
130	39	2

b. Assistance to Accepted White Applicants

Assistance to white applicants takes the form of identical or substantially identical answers to Question 19 (interpretation) and Question 20 (duties and obligations) and check marks or Xs indication to the applicant where the form should be signed.

---

* The breakdown does not include forms executed by persons whose race is unknown.

[fol. 2104] 1. Question 19-interpretation

A

	Interpretation
Name: Henry A. Miller Date: 1/2/62 Section: 30	"I cannot be put in jail for owing a debt"
Name: Mrs. Henry A. Miller Date: 1/2/62 Section: 30	"I cannot be put in jail for owing a debt."

B

	Interpretation
Name: John H. Galloway Date: 1/26/62 Section: 30	"It means I cannot be put in jail for not paying debts"
Name: Mrs. John Galloway Date: 1/25/62 Section: 30	"I cannot be put in jail for not paying debts"

C

	Interpretation
Name: James A. Tippett Date: 5/4/62 Section: 30	"The term Debt Does Not Extend to or embrace our pecuniary obligation imposed by the State as a Punishment for Crime" *
Name: Wilma F. Tippett Date: 5/4/62 Section: 30	"The term debt does not extend to or embrace any pecuniary obligation imposed by the state as a punishment for crime. A civil suit may be filed against a debtor" *

* The interpretation given by the Tippetts appear among the annotations to Section 30 of the Constitution.

D

	Interpretation
Name: Judy J. R. Humphreys Date: 1/26/62 Section: 30	"No one can be put in jail for owing a debt."

[fol. 2105]

E

	Interpretation
Name: Mrs. Leonard Perryman Date: 1/26/62 Section: 30	"No one shall be put in jail for owing me a debt."
Name: Mrs. Martha R. Todd Date: 4/4/62 Section: 30	"No one can be put in jail for owing one a debt."
Name: Ruby V. Nix Date: 4/4/62 Section: 30	"No one should be put in Jail owing you debt."

F

Name: Riley P. Denman Date: 2/3/62 Section: 33	"The state of Mississippi shall have a house of representatives and a senate"
Name: Mrs. Riley P. Denman Date: 2/3/62 Section: 33	"The state of Mississippi consists of a legistation compose of a senate and house representativ"

G

Name: Alton D. Holden Date: 1/26/62 Section: 37	"Before a person can be elected & can serve in the legislature he shall be elected in his county or district as provided by law."

Name: Mrs. Alton D. Holden Date: 1/20/62 Section: 37	"Before a person can serve for legisture he can be Elected in his district as provide be law four years"

H

Name: T. J. Meek Date: 3/24/62 Section: 108	"When ligestature dose away with an office his saliry stops"
Name: Mrs. T. J. Meek Date: 3/24/62 Section: 108	"When legisature does away with an office the salary stops"

I

Name: William W. Hamblin Date: 1/26/62 Section: 130	"The lieutnat governor draws the same salary as the speaker of the house"
[fol. 2106] Name: Mrs. William W. Hamblin Date: 1/26/62 Section: 130	"The Lieutant-governor draws the same salary as the speaker of the house."

2. Question 20-Duties and Obligations

A

The following accepted white applicants gave as their answer to Question 20 "to be a law abiding citizen," or a slight variation thereof.

Name	Date
A. A. Daugherty	11/3/61
F. G. Calvi	12/16/61
H. A. Miller	1/2/62
Mrs. H. A. Miller	1/2/62
J. M. Kennamore	1/12/62
P. Williams	1/19/62
Mrs. L. C. Johnson	1/22/62
Mrs. L. Perryman	1/26/62
D. K. Riggs	1/26/62
C. T. Thomas	1/27/62

Name	Date
J. H. Hardy	1/27/62
B. R. Worsham	1/29/62
D. R. Rayburn	1/29/62
Ben E. Wilson	1/30/62
B. J. Holden	1/30/62
Mrs. R. P. Denman	2/3/62
M. A. Prater	2/9/62
J. W. Cartwright	3/8/62
R. L. Crisp	3/16/62
L. C. Simmons	3/16/62
Mrs. L. C. Simmons	3/16/62
A. S. Hemker	3/17/62
T. J. Meek	3/24/62
Mrs. T. J. Meek	3/24/62
R. V. Nix	4/4/62
Mrs. M. R. Todd	4/4/62
C. K. Vincent	4/9/62
E. A. McKee	9/28/62
A. L. Jones	10/15/62
R. J. Loomis	10/19/62
Mrs. L. Darling	10/30/62
D. L. Brown	11/9/62
M. A. Flynn	11/10/62
M. J. Stone	12/8/62
M. E. Childress, Jr.	1/18/63
T. W. Peyton	1/19/63
L. L. Harris	1/21/63
G. F. Hensley	1/22/63
H. B. McDowell	1/28/63
R. C. Williams	1/28/63
Mrs. T. W. Farris	1/29/63
E. H. Looney	2/1/63
E. Easley	2/25/63
M. L. Gadd	3/2/63
Wilma Woody	3/8/63

[fol. 2107] The following accepted white applicants gave as their answer to question 20 "be a law abiding citizen and in elections," or a slight variation thereof.

Name	Date
T. M. Lewis	10/27/61
Mrs. T. Mc. Carley	10/27/61
Mrs. B. Davis	11/30/61
J. M. Stewart	1/17/62
Mrs. C. E. Fiddler	1/19/62
E. P. Rutledge	1/20/62
M. A. Earnheart	1/23/62
Mrs. I. M. Jones	1/24/62
B. Whitten	1/24/62
H. R. Thomas	1/25/62
Mrs. R. M. Prine	1/26/62
Judy J. R. Humpreys	1/26/62
W. M. Hamblin	1/26/62
Mrs. R. M. Hamblin	1/26/62
G. C. Patterson	1/27/62
D. J. Patterson	1/27/62
W. T. Hawkins	1/30/62
C. G. Stalilngs	1/30/62
H. R. Garner	2/1/62
J. V. Davis	2/1/62
K. W. Aldridge	2/7/62
Mrs. C. W. Taylor	3/30/62
C. C. Braswell	3/30/62
B. J. Grier	5/18/62
C. W. Grier	5/18/62
G. M. Stacy	5/18/62
B. E. Ward	6/1/62
Mrs. L. Kilpatrick	6/22/62
Mrs. C. Thomas	7/7/62
Mr. C. Pounders	8/4/62
N. E. Vinson	8/7/62
B. L. Spears	9/6/62
K. W. Massey	9/8/62
H. V. Raney	9/10/62
B. J. Gates	9/11/62
C. A. Collin	9/20/62
A. E. Treadway	10/19/62

Name	Date
F. E. Jones	10/22/62
P. I. Carter	10/25/62
L. L. Murphy	10/31/62
G. L. Bobbitt	11/10/62
Mrs. D. M. Sexton	12/1/62
L. Sowell	12/27/62
E. R. Bryant	1/11/63
V. L. Laughter	1/11/63
H. C. Cook	1/21/63
M. S. Goodson	1/25/63
L. C. Pepper	1/25/63
T. R. Berryhill	2/9/63
J. S. Hamilton	2/9/63
C. S. Green	2/28/63
B. D. Burgess	2/11/63
S. R. Bumpous	2/23/63
A. M. Pounders	3/5/63
B. G. Sing	3/12/63
S. Sing	3/12/63
A. E. Coopwood	4/11/63

C

Mr. and Mrs. John W. Merrit registered on January 20, 1962. Their answers to question 20 were:

Mr. Merritt	Mrs. Merritt
You should obay the laws of the constitution You should vote You Should pay your taxes	You should obey the laws of the Constitution You should vote You shoul pay your taxes

[fol. 2108] 3. Checkmarks and Xs

Check marks or Xs appear at the signature line, oath line, or both on the application forms of the white registrant listed below.

Name	Date
William Alday	11/30/61
Mrs. L. R. Broadway	1/18/62
Alton Holden	1/20/62
Earnestine Holden	1/20/62

Name	Date
Mrs. E. R. Deen	1/29/62
E. R. Deen	1/30/62
Lilly May Bryant	1/30/62
C. C. Crisp	1/31/62
J. D. James	7/9/62
Murphy Rowe, Jr.	10/10/62
D. L. Brown	11/9/62
O. P. Keadle	1/22/63
J. D. Worsham	1/30/63
Jo Ann Hill	2/11/63
R. M. Britt	2/12/63

c. Grading

The application forms of the registrants listed below reflect the lenient qualification standards applied to white applicants between November 30, 1961 and March 8, 1963.

A

Name	Date	Section
Mrs. William E. Alday	11/30/61	116

Section 116: The Chief executive power of this state shall be vested in a governor who shall hold his office for four years, and who shall be inel as his immediate successor in office.

Question 19: "The Chief elesugated of the power shall head his office for four years, and he elegibles to pay his tax evy two years."

Question 20: "While be all law of the state you should pay your tax by years."

[fol. 2109]

B

Name	Date	Section
James L. Herbert	1/6/62	86

Section 86: It shall be the duty of the legislature to provide by law for the treatment and care of the insane; and the legislature may provide for the care of the indigent sick in the hospitals in the state.

Name	Date	Section

Question 19: "It shall be the duty of the legislation to provide treatment & care for the hyring & they may provide for the care of the indigent sick by state hospitals"

Question 20: "I will abide by all laws and corporate with all laws inforced officer & locals of the county"

C

Name	Date	Section
Mrs. W. V. Hooper, Jr.	1/29/62	35

Section 35: The senate shall consist of members chosen every four years by the qualified electors of the several districts.

Question 19: "You Should Vote to elect the people to lead your country"

[fol. 2110]

D

Name	Date	Section
Ben E. Wilson	1/30/62	130

Section 130: The lieutenant-governor shall receive for his services the same compensation as the speaker of the house of representatives.

Question 19: "He makes the same Salary"

Question 20: "to be a law abiding Sitizen"

E

Name	Date	Section
Mrs. T. B. Sanderson	1/30/62	118

Section 118: The governor shall receive for his services such compensation as may be fixed by law, which shall neither be increased nor diminished during his term of office.

Question 19: "Shall serve the the people to the best of his knowledge—and abide the laws"

F

Name	Date	Section
Gloria Mae Vaughn	1/31/62	265

Section 265: No person who denies the existence of a Supreme Being shall hold any office in this state.

Question 19: "Anyone who is not a law abiding citizen should not be qualified to vote regardless of his standards. They should also be a citizen of the U.S. and live in the state for a number of years before he can qualify."

Question 20: "I must be a law abiding citizen and live in the state for a number of years before being qualified for any of the duties and obligation of citizenship"

[fol. 2111]

G

Name	Date	Section
P. R. Davis	4/14/62	164

Section 164: A chancery court shall be held in each county at least twice in each year.

Question 19: "Lif at the chancery court will meet twice a year to determine aws & ert"

Question 20: "I certify that I understand my duties & obligations of citizenship under a constitutional form of Government."

H

Name	Date	Section
Nancy Ruth Davis	4/20/62	108

Section 108: Whenever the legislature shall take away the duties pertaining to any office, then the salary of the officer shall cease.

Question 19: "This shall be the law of the state of Mississippi until the constitution amends same"

I

Name	Date	Section
M. W. Howath	5/10/62	118

Section 118: The governor shall receive for his services such compensation as may be fixed by law, which shall neither be increased nor diminished during his term of office.

Question 19: "At the beginning of a term of office of the governor the salary, traveling expenses, subsistance & etc. wil be fixed and any other expenses other than those designated will be paid personally"

[fol. 2112] The following white registrants omitted signatures on the application forms:

Name	Date
W. W. Vaughn	1/7/62
Roland Lyons	4/14/62
Jo Ann Hill	2/11/63
John L. Gatewood	3/23/63

[fol. 2113] Part III

The following Negroes have been denied the right to vote because of some error or omission on their forms, or by use of the constitutional interpretation test and the duties and obligations test.

Name	Date	Reason
Emma L. Williams	5/22/62	this applicant was told that her form was acceptable ,but that she had failed to sign her name.
Gladys E. P. Muse	5/22/62	Interpretation test
Goadys E. P. Muse	5/29/62	Interpretation test
Lovell Williams	5/22/62	Interpretation test
Lovell Williams	5/29/62	Interpretation test
Emma L. Williams	5/29/62	Interpretation test

[fol. 2114] Quitman County #5

Part II

Application Forms

1. & 2. Number and Period Which Forms Cover

The records in Quitman County were photographed by agreement on April 25 and 26, 1963. The records were again photographed on May 28 and 29, 1963. Four hundred and fifty-two forms were photographed. Except for one form dated March 24, 1955, the application forms are for the period between January 30, 1961 and April 25, 1963. Three hundred and thirty-six white persons and 10 Negroes were accepted and registered, and two white persons and thirty-seven Negro applicants were rejected. In addition, there are 13 rejected forms of persons whose race is not presently identified, 50 forms by persons whose race is not presently known were identified by the registrar as accepted applicants, but their names do not appear on the registration or poll books. Most of these forms are dated in 1963, and it is possible that these persons have not as yet returned to sign the registration book. Four applications including, at least, one Negro were not acted upon at the time of photographing.

The analysis of these forms does not include the four pending forms, or the persons whose race is presently not identified.

	Whites	Negro
accepted	336	10
rejected	2	37

[fol. 2115] 3. Analysis of Forms

a. Selection of Sections of the Constitution

Approximately 93% of all white applicants were given sections of the Constitution which only one Negro received. Seventy-six per cent of all white applicants received three sections: Section 8 (All persons resident in this state, citizens of the United States, are hereby declared citizens of the state of Mississippi; Section 14 (No person shall

be deprived of life, liberty or property except by due process of law; or Section 265 (No person who denies the existence of a Supreme Being shall hold any office in this state.) No Negro applicant received either Section 8 or Section 14. One Negro applicant received Section 265. Thirty-seven Negro applications with identifiable sections of the constitution show that they received sections of greater complexity, length or technicality. There are ten rejected applications of Negroes which are incomplete and do not indicate the section received. Sixty per cent of these Negro applicants received relatively technical sections of the constitution to copy and interpret which no white applicant was required to interpret. These sections include section 104 having to do with the statute of limitations in civil cases not running against the state; section 97 concerning the inability of the legislature to revive a remedy barred by any statute of limitations; section 80 concerning the abuse of the taxing power [fol. 2116] by municipal corporations; Section 68, creating a precedence for appropriation and revenue bills in both houses of the legislature at regular sessions; and Section 66, regulating the enactment of laws granting a donation or gratuity for sectarian and non-sectarian purposes.

The following chart provides a detailed analysis of section selection by race during this period.

Group A—Sections given to 93% of the white applicants

Section	White	Negro
14	140	0
8	58	0
265	49	1
92	11	0
207	9	0
108	7	0
28	5	0
83	4	0
209	4	0
20	3	0
35	2	0
123	2	0
157	2	0
164	2	0
23	1	0
30	1	0
33	1	0
34	1	0
37	1	0
67	1	0
250	1	0

Group B—Sections given exclusively to Negro applicants

Section	White	Negro
29	0	1
32	0	4
50	0	1
61	0	2
62	0	1
63	0	2
66	0	1
68	0	1
80	0	1
97	0	1
104	0	5
116	0	1
146	0	1

[fol. 2117]

Group C—Sections given to Negro applicants and some white applicants

Section	White	Negro
15	8	3
22	1	3
39	5	1
73	1	1
74	1	2
166	1	3
167	4	1
215	1	1

b. Assistance

The following white applicants had substantially identical constitutional interpretations and substantially identical statements of the duties and obligations of citizenship in response to Questions 19 and 20 respectively so as to compel a conclusion of assistance. There are no such Negro applications.

Lester, Faye, C.
12-21-61
#19: Every Person has equal rights under the law
#20: To obey the laws of the state and to uphold the laws.

Lester, William W.
12-21-61
#19: Every person has equal rights under the law
#20: To obey and uphold the laws of the state

Turman, Dorothy Ann
1-27-62
#19: Twice each year chancery court shall be held in each county

Turman, Billy Jr.
1-27-62
#19: Twice each year chancery court shall be held in each county

#20: Obey the constitution

Bolton, Betty B.
6-30-62
#19: A citizen of the United States, is a citizen of Mississippi
#20: Blank

[fol. 2118] Golden, John Preston, Sr.
11-19-62
#19: I think that Section 14 means that no one person shall take the life or liberty of another person.
#20: I understand the duties of citizenship is to be live trulyful, about the government under witch we now live and get out and vote to make this a better government.

Rowland, Allen C.
11-26-62
#19: No one will be able to take my life, freedom, or property from me except by law
#20: To have the right to vote and the right to vote for the person I think that would be right for the office

#20: Follow the duties of the constitution

Bolton, Henry W.
6-30-62
#19: A citizen of the United States, is a citizen of Mississippi
#20: Blank

Adams, Harold W.
11-21-62

#19: I thank that section 14 means the no one person shall take life or liberty of another person
#20: I understand the duties of citizen is to be trutfuly about the government under whiched we now live and to get out and vote to make this a better government.

Rowland, Jame E.
11-26-62
#19: No one can take my life liberty or property away from me except by the law
#20: Dute to vote to Whom I choose

Rowland, Caroly K.
11-26-62
#19: No body can take it form you but by law
#20: Dute to vote to had a say & to pick & choose whose I choose.

Madison, Thomas J. 12-28-62	Madison, Gwendolyn C. 12-28-62
#19: Every person shall have the right to trial to defend him self	#19: Every person shall get a fair trial to defend himself
#20: Every citizen shall vote	#20: Every citizen should vote.
Golden, John Edward 2-6-63	Lambert, Oliver Finley 2-5-63
#19: No person's life, liberty or property Shall be taken except by legal process	#19: No person life, liberty or property shall be taken taken from him without legal process
#20: To obey the laws and support the constitution of the United States and the State of Mississippi	#20: To obey the laws and support the constitution

[fol. 2119] c. Grading

1. The following comparison of accepted white applications and Negro applications rejected on the basis of their constitutional interpretation illustrates the arbitrary standard used in granding Question 19 of the application form.

Negro—Rejected	White—Accepted
Jones, Jeff 2-5-63	Morrison, Phyliss Joan 1-25-63
Q18—§32: The enumeration of rights in this constitution shall not be construed to deny and impair others retained by, and inherent in, the people	Q18—§28: Cruel or unusual punishment shall not be inflicted, nor excessive fines be imposed.
Q19—Interpretation: This rights shell be obeyed, and not used to heart or harm other	Q19—Interpretation: Cruel and unusual punishment: 11 am Jus 1107, constitutional law 31b,

15 am Jus 171 criminal law ss 523 et ref, excessive fines: 15 am Jus 185 criminal law 8 551

Cotton, L. Centrel
2-6-63
Q18—§29: Excessive bail shall not be required, and all persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses when the proof is evident or presumption great.
Q19—Interpretation: That is no one shall be over cheig for bail and that

Banentine, Walter
2-9-63
Q18—§14: No person shall be deprived of life liberty or property except by due process of law.
Q19—Interpretation: Do on to others as you would have them do onto you.

2. The following interpretations submitted by accepted white applicants compels the conclusion that the interpretation requirements of §244 of the Mississippi Constitution are not used as a test for white applicants.

[fol. 2120] Section 14: No person shall be deprived of life, liberty or property except by due process of law.

Group A	Q. 19
Bailey, Jackie 1-21-63	Unanswered
Snyder, Joe Lee 1-23-62	That we people of the United States have the right to vote or speak as we furnty.
Ryals, Johnni M. 1-25-62	To be free to vote as you see best to your decision.
McNemar, William Galton 1-17-62	The Law should have sworn signed statement by election before bringing one in.

Susie Redden 1-31-62	except by law
George R. Pickett 3-5-6	It means the way I see it is, I am a free american and law abiding citizen
Davidson, Joe L. 4-30-62	A person should try his best to live right and the people at the state will help in every way possoble to keep the right of the people

Group B—The following accepted white persons recopied Section 14 in response to Question 19.

1. Annie Lou Davis
   1-30-61
2. Haynes, Wilma L.
   10-27-61
3. Holley, Marie
   1-23-62
4. Westbrook, Mrs. G.
   3-28-62
5. Jacobs, Billy
   3-31-62
6. Austen, Beatrice
   6-16-62
7. Roberson, Charley, W.
   12-12-62
8. Karnegay, John P.
   12-30-62
9. Boyett, Lavon Arvis
   1-24-63
10. Jennings, Evelyn Marie
    1-30-63
11. Jennings, V. J.
    1-30-63
12. White, Ernest Eugene
    2-11-63

[fol. 2121] Section 8: All persons, resident in this state, citizens of the United States, are hereby declared citizens of the State of Mississippi.

Q. 19

Rodgers, John L. 6-4-62	of United State member or citizen of the United State of a American
Stone, Grace Fredian 8-11-62	Self-explanatory
Parker, Mary Jeanette 8-18-62	We the people of the United States in order to form a perfect union

Sibert, Dorothy Louise 10-4-62	Honest & true to our State & our Country & for which it Stands.
Glenda Fay Pruett 1-12-63	If you are not a citizen you can't vote in this state.
Hailey, Mrs. Cecile B. 7-24-62	If you live in the U.S. and a citizen you are a eligable to vote.

Section 108: Whenever the legislature shall take away the duties pertaining to any office, then the salary of the officer shall cease.

Mullina, Mary Elisabeth 3-22-63	My interpretation of the meaning of the constitution is that I have a right to vote for whom I please.

Section 15: There shall be neither slavery nor involuntary servitude in this state, otherwise than in the punishment of crime, wherof the party shall have been duly convicted.

White, Mrs. Theron 7-3-62	A person cant be convicted of a crime unless he has been convicted

[fol. 2122] Section 28: Cruel and unusual punishment shall not be inflicted nor excessive fines be imposed.

Q. 19

Aldridge, James Franklin 1-25-63	As long as I do the wright things that a good citizen should of the state of Mississippi should or any other State of the United States.

Section 265: No person who denies the existence of a Supreme Being shall hold any office in this state.

Cranford, Amy Alice 1-5-63	No one would want to be arrested by someone or a law that might be quiet of

	the same crime and we would want a just law.
Halley, Bobby Dean 3-5-63	Anyone who has caused death or has aided in such a crime can not hold an office of the state.
Selby, Eva Pearl 4-15-63	I betlieve in God in this State also I believe offices in this states.

3. Question 20

The following white applicants were accepted without completing Question 20:

Morrison, Arnold K.	1/25/62
Hubert C. Moore, Jr.	2/6/62
Cook, Clotilda H.	6/30/62
Bolton, Betty B.	6/30/62
Bolton, Henry W.	6/30/62
Lester, Mary Magaline	9/29/62
Wages, Cecil Jerold	10/27/62
Roberson, Charley W.	12/12/62
Taylor, Sherman Allen	1/22/63
Collins, Phillip D.	1/24/63
White, Ernest Eugenes	2/11/63
Stone, Frederick Green, Jr.	3/14/63

[fol. 2123] **4. Omissions on the Form**

Julia V. Maeweather, a Negro, applied to register on April 12, 1963 and was rejected on the basis of an incomplete form. Answers to Questions 3, 7, 11, 13 and the applicant's oath were incomplete or omitted. The following accepted white applicants had similar errors or omissions on their forms.

Name	Date of Application	Error or Omission
Betty Sue Adams	10-27-62	Q. 3 unanswered
Hilbo Christine Bets	10-31-62	Q. 3 unanswered
V. J. Jennings	1-30-63	Q. 7, 11, 13 unanswered
Fred Rock, Jr.	10-29-62	Q. 7, oath incomplete
William David Till	12-13-62	Q. 11, oath incomplete
Gwendolyn Cox Madison	12-28-62	Q. 11 incomplete
Alice Joyce Miller	12-29-62	Q. 11 incomplete
Edward Leon Thornton	1-7-63	Q. 11 incomplete
Gilbert Murray Bridges	1-18-63	Q. 10, 11 unanswered
Jackie Bailey	1-21-63	Q. 10, 11 unanswered
Mrs. Gerald L. Bland	1-22-63	Q. 11 unanswered
Loven Arvis Boyett	1-24-63	Q. 11 unanswered
Mary Jane Cunningham	1-28-63	Q. 11 unanswered
Martha Little	2-6-63	Q. 11 unamswred
Mary Evelyn Griffith	2-9-63	Q. 11 unanswered
Charles Peyton Henry		Q. 11 unanswered
Mary Elizabeth Mullina	3-22-63	Q. 11 unanswered
Royce Laurent Self	3-23-63	Q. 10, 11, 13 (1) unanswered
Charlie Thomas Grant		Q. 11 unanswered
Sandra Ann Garrison	3-30-63	Q. 11, 13 (1) unanswered
Martha Quay Franka Snyder	12-19-62	Q. 13 unanswered
Naomi M. Dye	3-2-63	Q. 13 unanswered
Laurence D. Bells	11-1-62	Oath incomplete except for signature
Kenneth Cobb	1-29-63	Oath incomplete except for signature
Montie B. Loster	12-29-62	Oath unsigned
E. E. White	2-11-63	Oath unsigned

[fol. 2124] 5. Similarly, Mrs. Imogene M. Bradley, a female Negro, applied to register on March 22, 1963 and was rejected because she had not been in the precinct for one year. The following white persons completed application forms and registered without having been resident in the precinct for a full year.

Name	Date of Application	Resident in Precinct
Tommie Lee W. Ford	12-17-62	2 weeks
Mondie B. Foster	12-29-62	4½ months
Mrs. Marie Edmondson	1-25-63	4 months
Anne Moore Mc Gaka	1-28-63	1 month

6. Of the 396 forms identified as accepted approximately 266 of the forms designate two places for the applicant to sign—the ——— and the application—250 of these have no signature for the application.

[fol. 2125] Tallahatchie County #6

Part II

Application Forms

1 & 2. Number of Application Forms and Period Covered By Forms

The first application is dated June 30, 1960. There were seventy-six forms made available in the Charleston Courthouse for photographing on August 23, 1962. These applications can be divided into categories as follows:

	Accepted	Rejected
White	69	0
Negro	4	3

Tallahatchie has a second county seat at Sumner at which the voting records for precincts in the western part of the county are kept. No application forms were made available when the records at Sumner were photographed on August 24, 1962. None of the application forms photographed at Charleston were by applicants who resided in the precincts served by the Sumner Courthouse.

3. Analysis of Forms

a. Selection of Constitutional Sections—

For white applicants, Mr. Harris used § 1 (60 times), § 265 (5 times), § 20 (1 time), § 106 (1 time), § 240 (1 time), and § 243 (1 time). For Negroes he used § 1 (2 times), § 4 (1 time), § 20 (1 time), § 240 (1 time) and § 257 (1 time).

b. Assistance to White Applicants—

(1) The following 15 accepted white applicants have identical or virtually identical answers to both questions 19 and 20. Each received section 1 of the Constitution to interpret. That section deals with the distribution of the powers of government. In section 1, the sequence of description of the three branches is: "legislative," "judicial" [fol. 2126] and "executive." In the following answers each applicant in question 19 used a sequence different from that of the section: "judicial," "legislative" and "executive."

Following answers each applicant in question 19 used a sequence different from that of the section: "judicial," "legislative" and "executive."

	Q–19	Q–20
Childers, Mary J. Jan. 30, 1961	"The powers of the state are divided into three distinct departments, they are judicial, legislative, & executive."	"Duties of a good citizen are to uphold the constitution of the U.S. & the state in which you live— to vote & participate in all civic matters to the best of your ability."
Cox, James G. Jan. 31, 1961	"The powers of the state are divided into three distinct departments They are judicial, legislative & executive."	"Dutys of a good Citizen are to uphold the Constitution of the U.S. & the State in which you live. to vote— participate in all civic matches to the best of your ability."
Laurence, (Mrs.) John Jan. 31, 1961	The powers of the state are divided into 3 distinct departments; they are judicial, legislative, & executive."	"Duties of a good citizen are to uphold the constitution of the U.S. and state in which you live. and to vote & participate in all civic matters to the best of your ability."

	Q–19	Q–20
Little, Mildred H. Jan. 31, 1961	"The powers of the state are divided into three disctinct departments, they are judicial, legislative & Executive."	"Duties of a good citizen are to uphold the Constitution of the U.S. & the state in which you live—to vote & participate in all Civics Matters to the best of your ability."
[fol. 2127]		
Wolfe, Ellawese M. Feb. 1, 1961	"The powers of the State are divided into three distinct departments, & they are judicial legislative & Executive."	"Duties of a good citizen of the United States of which you live and conduct the orders of the laws, and to vote in all civil matters of your ability."
Kellum, Joe C. Feb. 4, 1961	"The powers of the State are divided into three distinct departments, they are: judicial, legislative, (&) Executive."	"Duties of a good citizen are to uphold the Constitution of the U.S. & the state in which you live—to vote & to participate in all civic matters to the best of your ability."
Kernodle, George A. Feb. 4, 1961	"The powers of the state are divided into three distinct departments, they are judicial, legislature, & Executive."	"Duties of a good citizen are to uphold the Constitution of the U.S. and the state in which you live. to vote & participate in all civic matters to the best of your ability."
Evans, Hope May 12, 1961	"The powers of the state are divided into three distinctive parts The judicial legislative & Executive."	"The duties of a good citizen under a constitutional & state in which you live to the best of your ability."
Rideoute, Charles Wayne May 13, 1961	"The power of the state are divided into three distinct departments, they are judicial, legislative, and executive."	"Duties of a good citizen are to uphold the constitution of the United States and the state in which you live to vote and participate in all civic matters to the best of your ability."
Rideoute, Nancy S. May 13, 1961	The powers of the state of Mississippi are divided into three distinct departments, they are judicial, legislative, and executive.	The duties of a good citizen of the united States are to uphold the law, participate in civic matters, and promote a better understanding throught the country.

[fol. 2128]

	Q–19	Q–20
Mitchell, Hardy Barclay June 5, 1961	"The powers of the state are divided into three distinct departments; judicial legislative, and Executive."	"Uphold the Constitution of the United States and state in which you live."
Mullen, Virginia Dell June 6, 1961	"The powers of the state are divided into three distinct departments: judicial legislative and Executive."	"Uphold the Constitution of the United States and state in which you live."
Odom, Troy Biace, Jr. Aug. 24, 1961	"The powers of the state are divided into three distinct departments, they are judicial, legislative and executive."	"Duties of a good citizen are to uphold the constitution of the United States and the state in which you live to vote and participate in all civic matters to the best of your ability."
Little, Bobby Joe. Aug. 31, 1961	"The powers of this state are divided into three distinct departments, they are judicial legislative and executive."	"Duties of a good citizen are to uphold the constitution of the United States and the state in which you live to vote and participate in all civic matters to the best of your ability."
Reece, Ernest Ray Nov. 31, 1961	"The power of the state are dividen into three distinct departments which are judicial legislatate & executi e.	"Duties of a good citizen are to be honest & to uphold the law and the State in which they live & also to uphold the constitution of the United States."

[fol. 2129]

(2) Two accepted white applicants on different days.

	Q–19	Q–20
Rhew, Homer, Guy Jr. August 26, 1960	"The legislative, judicial, and executive branches of the government function independently the one of the other."	"It is the duty of any citizen to uphold the standards of the Constitution and to conduct himself accordingly."
Newson, Johnie D. Jr. Oct. 3, 1961	"The legislative, Judicial and executive branches of the government function independently the one & the others."	"It is the duty of any citizen to uphold the ——— of the Constitution and to conduct himself accordingly."

(3) Two white applicants on different days.

	Q–19	Q–20
Dickson, Arlas Annette April 21, 1962	"There shall be three separate departments of the powers of the government of Mississippi each with different powers. One shall be the legislative, another the judicial, he third, the executive."	"It is my duty as a citizen of Miss. to observe all the laws and regulations set forth by my state which I feel are for the betterment of the whole- and to exercise my rights as a citizen in all respects if I feel that they are not."
Burks, Bobby Eugene May 18, 1962	"There shall be three separate departments of the powers of the government Mississippi each with different powers. One shall be the legislative, another the executive, the third the judicial."	"It is my duty as a citizen to observe and obey the laws of the state, to take part in elections and exercise my rights as a citizen to try to elect the best persion for officers."

[fol: 2130]

(4) Two white applicants on different days.

	Q–19	Q–20
Hendricks, Charles LaFayette Jr. Sept 3, 1961	"The powers of the state of Mississippi are divided into three departments, the legislative, judicial and executive departments."	"The duties of citizenship is that the citizen should uphold the constitution of the United States of American and the state of Mississippi, to abide by all laws, and to *preform* all civic duties that the citizen might be called upon do.
Venable, James Edward III Oct 2, 1961	"The powers of the state of Miss. are divided into three departments, the legislative, judicial and executive departments."	"The duties of citizenship is that the citizen should uphold the Constitution of the United States and the State of Mississippi to abide by all laws and to *preform* all civic duties that the citizen might be called upon to do.

(5) Two white applicants on different days.

	Q–19	Q–20
Norton, Thomas Melton April 30, 1962	"That the powers of the government of the state of Mississippi are divided into three major departments. The legislative, the executive, and the judicial. The legislature will make the laws, the executive carries them out, and the judicial judges	"Each citizen under the constitutional form of government has a duty and obligation to take an active part in his government. This is usually carried out by casting his vote in each election. This helps to assure that the best qualified person will
	Q–19	Q–20
[fol. 2131]	them. The legislature is made up of the senate and house of representative, the executive is made up gov. and his department and the judicial is made up of courts."	always be elected to the office for which he is seeking election."
Slaughter, Ernestine May 16, 1962	"The powers of the government of the state of Mississippi are divided into three major sections, The legislative, the executive and the judicial. The legislature will make up the laws. The executive will carry them out and the judicial judges them. The legislature is made up of the senate and the *hous* of representations, the executive is made of the gov. and his department. And the judicial is made up of the courts."	"Each citizen under the constitutional form of government has a duty and obligations to take an active part in his government. This is carried out by casting his vote in each election. This will help assure him for the ofice four which he is seeking election."

(6) Three white applicants on different days.

	Q–19	Q–20
McCartney, Jean Moorman Oct. 19, 1961	"The legislature, judicial and executive branches of the government operate independently one of the other."	"To select the person most qualified for a public office of responsibility."

[fol. 2132]

Application Forms

	Q–19	Q–20
Rutledge, Mrs. Blanche T. Oct. 28, 1961	"The legislative, judicial and executives branches of the government operate endependenlty one of the others."	"To elect the person who you think is best qualified to hold a public off. of responsibility."
Farris, (Mrs.) L. E. April 9, 1962	"Each power of the government has a right to act independently one of the other."	"To select a person best suited or qualified to serve as the elictrued officials of the county and state."

(7) Two white applicants on different days.

	Q–19	Q–20
Denley, Daphine June 30, 1962	"The government of Mississippi is made up of three different departments with specific powers and duties to each. The legislative department made up of the House of Representatives and senate to enact the laws of the State. The judicial branch made up of the courts to sit in judgmert on these laws. The executive branch which is headed by the Governor to see that these laws are made, judged and executed properly."	"I believe that as a citizen I should support my government with my taxes, my service and my loyalty, as well as my vote for the men who I think will best serve my country."

[fol. 2133]

	Q–19	Q–20
McCullough, Albert Murray 7/17/62	"State of Mississippi is divided into three distinct Departments: Legislative consists of the house of Representatives and Senate(This body makes the laws) The judicial branch make use of the courts to sit in judgment on these laws) The executive Branch is headed by the governor to see that these laws are made, judged, and executed properly."	"As a citizen I should support the Constitution, pay my taxes offer my services and my loyalty as such, I should cast my vote for the person whom I think will serve for the respective offices best."

(8) Two white applicants on different days.

	Q–19	Q–20
Smith, Billy Carlton June 6, 1962	"The Legislative makes the Laws for the state. The judicial is th corts. The Executive inforce the law and consist of the Governor and his staff.	"To execive my —— as a citizen under constitution form of governments. To take part in elections and cast my Ballot for the person who I think would be the best for that office."
Brasher, James H. Jr. May 31, 1962	"These three powes are legislative which is the house of Representatives & Senate which make the laws. The Judicial consists of the corts which help inforce the laws and the executive which protanist to the governor and his staff."	"The duties of all citisents are to uphold the law, which we set forth ourselves and to help protect our rights as free citsents. One protection is to vote and put in to office the man that we think will do the best job of us all."

[fol. 2134]

(9) Two applicants on different days.

Sayle, David Bardwell June 1, 1960	"The powers of the government of the State of Mississippi shall be divideded into three separeate branches with each of them having a separate magistracy. This is to serve as a check and balance system in the state government. No one department can exercise the powers of the other two departments.	"Yes I fully understand the duties ane obligations of citizenship under a constitutional form of government."
Gong, Sam June 8, 1960	"The three powers are a check and balance system in the state government. No one department can exercise the powers of the others. One to make and amend the laws, the other, to judge the causes *etc*and the executive to execute the laws."	"Yes, I fully understand the duties and obligations of citizenship under a constitutional form of government."

c. Grading

(1) The following accepted white applicants wrote wrong or non-responsive interpretations to section 1 of the constitution.

Ward, Bobby Lee July 27, 1960	Q.19—"That the state of Mississippi is —— under the state —— constitution and an ordinary of constitutional *convemtion* cannot violate it."

Brooks, Zeb A., Jr. August 10, 1960	Q.19—"The separation of the legislative, judicial and executive powers of *govermei* is and ordan*ie* can not violate it."

[fol. 2135]

Rutledge, Richard Taylor April 7, 1962	Q.19—"Those which make the law are legislative to one which make the law. Those which obey the law are Judicial to it and those which are executive to it are to judge upon it.
Buchanan, Darryl Wayne April 28, 1962	Q.19—"The first section employe the separation of powers. The legislative branch to make the law. This house is compise of the house of representatives and senate. The judicial branch is compose of the governor and his administrative officials."
Ridcout, Bobby Gene March 21, 1962	Q.19—"The State of Mississippi is divided into three distinct departments and each are *comfided* to a separate magistrary which are *legistative* To one."
Moore, Albert Rufus April 2, 1962	Q.19—"each one of them have separate government or fail to perform."
Johnson, George R. April 6, 1962	Q.19—"That each government will enterfere in the affairs of the others makes no (?) difference the *cirstmances* a government with in its self."

(2) The following accepted white applicants wrote non-responsive statements of the duties and obligations of citizenship.

Evans, Hope May 12, 1961	Q.20—"The Duties of a good citizen under a constitutional state in which you live to the best of your ability."
Gong, Sam June 8, 1960	Q.20—"Yes, I help (?) understand the duties and obligations of citizenship under a constitutional form of Government."
Sayle, David Bardwell June 1, 1960	Q.20—"Yes I fully understand the duties and obligations of citizenship under a constitutional form of government.

[fol. 2136]

Leflore County

Part III

The Government believes that the following Negro citizens of Leflore County who filled out application forms were denied registration because of Section 244 of the Mississippi Constitution:

Form #	Name	Address
1318	Burton, Leonard	Greenwood
1596	McMillan, Elma F.	223 Taft, Greenwood
1699	Veal, Freddie Lea	308½ Broad St.
1701	Brown, Sara Alice	712 Avenue P.
1757	Harvey, Wallace	Greenwood
1825	Robinson, Erma J.	421 West Stone St.

Form #	Name	Address
2089	Hampton, Nick	Rt. 1, Box 427, Itta Bena
2096	Childress, Dorothy Ann	413 Ave. A
2209	McGee, William H.	202 Palace Street
2211	T. J. Loggins	Itta Bena, Miss.
2229	Markham, Mattie Mae	215 Oak St.
2251	Brown, Rosetta	612 State St.
2308	Morris, Mrs. Paulie Lee	114½ E. Gibb St.
2336	Henderson, Alma Green	619 Howard Street
2343	Lomax, Ary	214 E. Scott St.
2365	Johnson, Miss Minnie Lee	1005 Avenue F
2401	Pilcher, Amey Mae	109½ W. Johnson St.
2409	Moore, Willie Lee	1107 Holloway St.
2415	McCaskill, Dorothy	609 State St.
2417	Ward, Carrie L.	211 W. Percy
2442	Jordan, Andrew	423 Avenue G
2476	Reed, Virginia Mae	Itta Bena
2480	Walker, Lacie Ann	306 Ave. A
[fol. 2137]		
2481	Williams, Mrs. Jean	721 Ave. L
2497	White, Mrs. Clote Davis	615 State St.
2505	Jordan Clifton Curtis	810 Ave. E
2561	Lipscomb, Alice S.	1107 Eastlawn Dr.
2568	Nichols, Ioda	704 Ave. L. (LPA)
2571	Carpenter, Jewell	709 Ave. N
2572	Wright, Dorothy	721 E. McLaurin
2584	Steward, Minnie	601 Ave. L
2595	Johnson, Willie Lee	415 Ave. A
2596	Jackson, Dora Lee	216 Noel St.
2648	Wiggins, Frankie Lee	704 Ave. K
2650	Lucas, Hattie Mae	—
2651	Lucas, Ardellia	Rt. 2 Box 23A (LPA)
2656	Sanders, Mrs. Gradie Lee	713 Walthall St.
2675	Baker, Mrs. Thelma	720 Cotton St.
2676	Cheeks, Durtha Ree	610 Ave. K
2683	Keyes, Leonia	311 McCain
2730	Cayson, Arlena	703 E. McLauren
2832	Hampton, Nick Jr.	Rt. 1, Box 427 IB
2844	Sanders, Mary	208 E. Henry St.
2877	Johnson, Mary Elma	606 Broad St.
2887	Mallett, Mrs. Sammie Mae	26 Young Street
2907	Weaver, Ollie B.	701 Ave. N
2908	McGee, William Henry	202 Palace St.
2909	Greene, Dewey	619 Howard St.
2910	Davis, Mrs. Annie Lloyd	—
2911	Lane, Mary Lee	214 Ave. H
2932	Buckner, Sallie Mae McMorris	431 Ash St.
[fol. 2138]		
2943	Brown, Mrs. Lorene Ivey	507 Ave. I
2950	Campbell, Cora	Itta Bena
2964	Harris, Ruby	414 Stevenson
2969	Morris, Mrs. Pearlie Lee	825 Dixie Lane (LPA)
3004	Chandler, Hattie B.	926 Howard St.
3014	Johnson, Emma Elender	316 W. Gibbs St.
3023	Jordan, Arella	423 Ave. G
3031	Johnson, Minnie Lee	1005 Ave. P
3033	Hardy, Mrs. Alma Nichols	606 Howard St.
3052	Hampton, Ruthie B.	Itta Bena
3075	Greene, Freddie	619 Howard St.
3130	Brooks, Susie	115 E. Gibbs St.

Form #	Name	Address
3177	Roberts, Rev. Eddie Winslow	110 Mitchell St. I.B.
3205	Robinson, Mrs. Louise	204 Noel St.
3220	Allen, Estella Clark	McKinley St. I.B.
3242	Payton, Mary Virginia	Itta Bena
3247	Jordan, Andrew L.	423 Ave. G
3280	Hampton, Nick	Box 427 Itta Bena
3301	Kingston, Henrietta	Itta Bena
3303	Mitchell, Felix Louis	705 Broad St.
3306	Carpenter, Jewell J.	709 Ave. N
3307	Jackson, Dora Lee	Greenwood
3315	Strong, Mrs. Mary	Itta Bena

[fol. 2139] Leflore County

Part III

The Government believes that the following Negro citizens of Leflore County who filled out application forms were denied registration because of the duties and obligations question:

Form #	Name	Address
2468	Jordan, Mrs. Christian Bell	514 Avenue H
3122	Walker, Lacie Ann	306 Avenue A

[fol. 2140] Benton County #14

Part II

Application Forms

(Supplementary Analysis)

3. Analysis of Forms

a. Selection of Sections of the Constitution

Between June 25, 1962 and May 7, 1963, the dates of the first and last forms photographed on December 20, 1962 and May 8, 1963, 174 applicants received 54 sections of the Mississippi Constitution to copy and interpret. The forms of 7, 4 white persons, 2 Negroes and 1 race unknown, bore no constitutional sections.

Section	White	Negro	Section	White	Negro
30	0	3	132	1	0
33	0	1	136	0	1
35	3	0	144	0	2
38	0	1	145	0	1
39	0	1	146	0	1
50	1	0	148	1	0
63	0	1	150	3	0
67	6	0	152	4	0
73	1	0	153	5	0

Section	White	Negro	Section	White	Negro
92	2	0	154	6	0
93	1	0	156	0	1
101	7	1	157	5	4
108	1	0	158	1	1
114	1	0	162	4	1
117	5	0	166	4	0
118	2	0	167	0	2
119	4	1	172	2	0
122	0	1	173	1	0
123	1	0	174	4	1
126	7	2	175	2	0
127	1	2	176	7	1
128	5	1	196	0	1
129	0	0			
[fol. 2141]					
198	0	1	226	2	0
209	6	0	246	0	2
214	2	0	250	5	0
215	1	1	265	16	5
217	0	1			

Two persons of unknown race received sections 129 and 265.

b. Assistance to Accepted White Applicants

Assistance to accepted white applicants takes the form of identical or virtually identical answers to question 19 (interpretation) by persons who received the same constitutional section and similar answers to question 20 (duties and obligations).

(1) Question 19—Interpretation

A

Name: J. C. Breedlove
Date: 2/26/63
Section: 152

"The circuit and chancery courts of the state shall be divided into convenient districts by the legislature."

Name: Galon D. Hunt
Date: 3/30/63
Section: 152

"The circuit and chancery courts of the state shall be divided into convenient districts by the legislature."

B

Name: A. R. Goolsby
Date: 2/26/63
Section: 174

"A district attorney for each circuit district whose compensation shall be a fixed salary whose term of office shall be four years shall be selected in the manner provided by law and whose duties will be prescribed by law."

[fol. 2142]

Name: F. T. Murley
Date: 3/30/63
Section: 174

"A district attorney for each circuit court district whose compensation shall be a fixed salary, whose duties shall be prescribed by law, whose term of office shall be four years, shall be selected in the manner provided by law."

Name: T. M. Bryant
Date: 5/3/63
Section: 174

"A district attorney for each circuit court district whose compensation shall be a fixed salary, whose term of office shall be four years, whose duties shall be prescribed by law, shall be selected in the manner provided by law."

C

Name: Barbara Dunn
Date: 1/28/63
Section: 250

"No person can elegible to hold office except qualified electors unless the constitution provides otherwise."

Name: Larry Napper
Date: 5/6/63
Section: 250

"No one is eligible to hold office except qualified electors, unless the constitution provides otherwise."

D

Name: G. L. Thompson
Date: 1/10/63
Section: 265

"Any person that does not believe there is a God can not hold any office in the state of Mississippi."

Name: D. J. Grishman
Date: 2/28/63
Section: 265

"Any person who does not believe there is a god shall not hold any office in the state of Mississippi."

Name: R. C. Franks
Date: 3/23/63
Section: 265

"Any person that does not believe in god can not hold an office in the state of Miss."

[fol. 2143]

Name: Paul Gray
Date: 5/2/63
Section: 265

"Any person who does not believe there is a god can not hold any office in this star."

E

Name: B. P. Derrick
Date: 1/14/63
Section: 265

"Any person who does not believe there is a God or a hereafter cannot hold any office in this state."

Name: G. D. P. Beck
Date: 4/20/63
Section: 265

"Any person who believe there is no God or her after shall not hold any office in the state."

(2) Question 20—Duties and Obligations

The following white registrants wrote the duties and obligations of citizenship to be to "abide by state and federal laws," or a slight variation thereof.

Name	Date
K. G. Williams	10/6/62
E. G. Doyle	11/27/62
R. L. Steele, Jr.	1/2/63
J. D. Graves	1/24/63
B. E. A. Skelton	1/28/63
J. R. Boling	2/1/63
Joel Allen	2/2/63
Katie Byrd	2/2/63
R. L. Poff	2/4/63
A. S. Poff	2/26/63
A. R. Goolsby	2/26/63
Mrs. M. H. Scarth	2/27/63
C. Clarksam	3/27/63
Mrs. H. Feathers	4/13/63
Paul Gray	5/2/63
B. J. F. Eaton	5/6/63
L. Napper	5/6/63

c. Grading

Application forms filed by 3 white registrants between September 15, 1962 and March 4, 1963 reflect the lenient qualification standards applied to white applicants.

[fol. 2144] A

Name: J. S. Mason
Date: 9/15/62
Section: 126

"There shall be a seal of the state kept by the governor, and used by him officia ly, and be called the great seal of the state of Mississippi."

Question 19:

"The Great Seal Mississippi should be keep in the Governor office at all time on all important pappers, and void only by the Governor."

B

Name: D. F. Thompson
Date: 1/12/63
Question 20:

"To be a good citizen is often the low and the constitioned."

C

Name: K. E. Cox
Date: 3/4/63
Question 20:

"A citizen of the United States should upperhand & with hold the constution of the United States to the best of their ability I should never turn against the United States & to give assistance in every way toward the constitution of the United States of America."

[fol. 2145]

Part III

The following Negroes, who applied to register on the dates indicated, have been denied the right to vote by the use of the constitutional interpretation or duties and obligations test, or by the application of the perfect form requirement.

Name	Date
D. B. White	8/1/62
J. Royston	8/7/62
T. T. Baird	8/30/62
W. R. Tipler	9/10/62
J. McAfee	10/18/62
J. Royston	12/21/62
S. S. Avaut	12/31/62
A. S. Jeffers	12/31/62.

[fol. 2146]

Supplemental

Application Forms

Grenada #16

Part II

1 & 2. Number of Forms and Period Covered

The application forms have been re-counted. The information previously supplied should be changed to read as follows:

White

Accepted	1355
Rejected	0
Pending	47

Negroes

Accepted	7
Rejected	21

Unknown

Rejected	3

3. Analysis of Forms

a. Selection of constitutional sections

Section	White	Negro	Unk.	No. of Words
9	1321	16	1	11
16	22	1	0	15
21	13	1	1	35
59	3	2	0	136
61	0	1	1	26
85	1	0	0	45
124	1	2 (correction)	0	161

[fol. 2147]

147	3	0	0	98
159	6	3	0	57
203	2	0	0	58
239	26	2	0	45

There are four applications from which it is impossible to determine from the film the section asked the applicant. These four applications were filled out by white applicants.

All seven accepted Negro applicants received Section 9 to interpret.

The first time a section other than section 9 was given to any applicant was January 30, 1961. Until that date 982 applicants including the seven Negroes who were registered received Section 9 to interpret. The following is a chart of selection of sections by race since January 30, 1961, the date the registrar began to use other sections of the Constitution.

Section	White	Negro	Unknown
9	364	3	1
16	22	0	0
21	13	1	1
59	3	0	0
61	0	1	1
85	1	0	0
124	1	0	0
147	3	0	0
159	6	0	0
203	2	0	0
239	26	2	0

(correction of first half on page)

[fol. 2148] Marshall County #18

Part II

Application Forms

1. Number of Application Forms

There are 621 application forms. The date of the first form is September 16, 1961; the last form is dated May 8, 1963. The dates of photographing by the Department of Justice were March 19, 1962, January 15, 1963, and May 8, 1963. The overall breakdown is:

	Accepted	Rejected	Pending
White	281	28	50
Negro	67	131	50
Race Unknown	9	4	1

The breakdown by photographing periods is:

a. 9/16/61 to 3/19/62

	Accepted	Rejected
White	54	14
Negro	27	24

b. 3/20/62 to 1/15/63

	Accepted	Rejected
White	96	7
Negro	30	77
Race Unknown	4	3

c. 1/16/63 to 5/8/63

	Accepted	Rejected	Pending
White	131	7	50
Negro	10	30	50
Race Unknown	5	1	1

[fol. 2149] 2. Periods which Forms Cover

a. September 16, 1961-November 30, 1962

This period covers from the date of the first form until an agreement was made between the registrar and the Department of Justice to restrict the number of sections used in the interpretation date.

b. December 1, 1962-May 8, 1963

Since December 1, 1962 all applicants have been required to copy and interpret one of five sections of the Mississippi Constitution—8, 30, 33, 240, or 250.

3. Analysis of Forms

a. Selection of Sections of the Constitution

(1) September 16, 1961 to November 30, 1962—There were 282 applicants during this period. The following constitutional section breakdown covers only 272 of them because the race of 7 is unknown and the sections given to 3 are unknown.

Section 240: White 68 Negro 9

"All elections by the people shall be by ballot."

Section 169: White 1 Negro 27

"The style of all process shall be 'The State of Mississippi,' and all prosecutions shall be carried on in the name and by authority of the 'State of Mississippi' and all indictments shall conclude 'against the peace and dignity of the state'."

[fol. 2150]

Section 130: White 15 Negro 0

"The lieutenant-governor shall receive for his services the same compensation as the speaker of the house of representatives."

Section 21: White 3 Negro 26

"The privilege of the writ of habeas corpus shall not be suspended, unless when in the case of rebellion or invasion, the public safety may require it, nor ever without the authority of the legislature."

Section 33: White 25 Negro 9

"The legislative power of this state shall be vested in a legislature which shall consist of a senate and a house of representatives."

Section 198: White 4 Negro 13

"The legislature shall enact laws to prevent all trusts, combinations, contracts and agreements inimical to the public welfare."

Section 250: White 16 Negro 2

"All qualified electors and no others, shall be eligible to office, except as otherwise provided in this Constitution."

Section 5: White 0 Negro 4

"All political power is vested in, and derived from, the people; all government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole."

Section 167: White 7 Negro 3

"All civil officers shall be conservators of the peace, and shall be by law vested with ample power as such."

[fol. 2151]

Section 54: White 0 Negro 2

"A majority of each house shall constitute a quorum to do business; but a less number may adjourn from day to day, and compel the attendance of absent members in such manner and under such penalties as each shall provide."

Section 108: White 3 Negro 1

"Whenever the legislature shall take away the duties pertaining to any office, then the salary of the officer shall cease."

Section 32: White 0 Negro 12

"The enumeration of rights in this constitution shall not be construed to deny and impair others retained by, and inherent in, the people."

Section 172: White 0 Negro 8

"The legislature shall, from time to time, establish such other inferior courts as may be necessary, and abolish the same whenever deemed expedient."

Section 25: White 0 Negro 2

"No person shall be debarred from prosecuting or defending any civil cause for or against him or herself, before any tribunal in the state, by him or herself, or counsel, or both."

Sections 118 and 157:

Section 118 White 1 Negro 0

"The governor shall receive for his services such compensation as may be fixed by law, which shall neither be increased nor diminished during his term of office."

[fol. 2152] Section 157

"All causes that may be brought in the circuit court whereof the chancery court has exclusive jurisdiction shall be transferred to the chancery court."

Sections 4, 10, 14, 20, 22, and 63:

Section 4 Negro 1 White 0

"The legislature shall have power to consent to the acquisition of additional territory by the state, and to make the same part thereof; and the legislature may settle disputed boundaries between this state and its coterminus states whenever such disputes arise."

Section 10

"Treason against the state shall consist only in levying war against the same or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court."

Section 14

"No person shall be deprived of life, liberty, or property except by due process of law."

Section 20

"No person shall be elected or appointed to office in this state for life or during good behavior, but the term of all officers shall be for some specified period."

Section 22

"No person's life or liberty shall be twice placed in jeopardy for the same offense; but there must be an actual acquittal or conviction on the merits to bar another prosecution."

[fol. 2153] Section 63

"No appropriation bill shall be passed by the legislature which does not fix definitely the maximum sum thereby authorized to be drawn from the treasury."

Section 39:	White 2	Negro 2

"The senate shall choose a president pro tempore to act in the absence or disability of its presiding officer."

(2) December 1, 1962 to May 8, 1963

There were 339 applicants during this period. The following constitutional section breakdown covers only 330 of the them because the race of seven is unknown and the sections given to 2 are unknown. As noted above, applicants during this period have been required to copy and interpret one of five sections: 8, 30, 33, 240, and 250. The last three are set out above.

Section 8:	White 18	Negro 30

"All persons, resident in this state, citizens of the state of Mississippi."

Section 30:	White 87	Negro 21

"There shall be no imprisonment for debt."

Section 33:	White 28	Negro 20
Section 240:	White 65	Negro 23
Section 250:	White 15	Negro 23

[fol. 2154] b. Assistance to Accept White Applicants

Assistance to white registrants takes the form of identical or virtually identical answers to questions 19 (constitutional interpretation) and 20 (duties and obligations). The identical or similar answers have appeared throughout the entire period covered by the forms.

The forms filled out by white registrants on the dates indicated in (6), below, bear corrections to answers which are invariably better than the answer as originally set down.

(1) Question 19—Constitutional Interpretation

Of the 133 white registrants who were required to copy and interpret section 240 of the Mississippi Constitution ("All elections by the people shall be by ballot."), 67 of

them, on the dates indicated, interpreted it as: "to vote for the person of your choice by secret ballot," or a slight variation thereof.

Name	Date of Application
L. E. Barnett	10/21/61
J. L. Gardy	10/28/61
E. S. McAlexander	5/3/62
M. Kirk	2/2/62
R. C. Taylor	2/3/62
P. M. Cook	2/5/62
B. L. Shelby	2/17/62
W. H. Ray	2/17/62
L. M. Tomlinson	1/30/62
J. L. Yeager	2/23/62
W. K. DeVore	2/27/62
D. B. Yeager	2/23/62
T. D. Skelton	2/24/62
S. F. Harrison	3/5/62
G. M. McCollum	2/6/62
M. F. Shumaker	3/23/62
Mrs. J. H. Landreth	3/21/62
J. Zanola	5/17/62
R. McCormick	5/16/62
D. T. Gossett	5/10/62
Mrs. D. T. Gossett	5/10/62
B. B. Arnold	5/19/62
G. L. Arnold	5/19/62
E. W. Wilson	5/29/62
C. P. Locke	5/26/62
T. W. Jamison	6/11/62

[fol. 2155]

B. W. Palmer	7/9/62
O. R. Clayton	8/27/62
A. F. Mills	8/18/62
G. R. Ash	8/18/62
Mrs. L. M. Joyner	9/8/62
Harold Butler	10/22/62
Mrs. V. M. Beasley	?
J. C. McClure	11/5/62
T. G. Tomlinson	1/31/63

Name	Date of Application
L. F. Sharp	2/1/63
Mrs. W. D. Hollowell	2/5/63
B. E. Fesmine	1/5/63
V. J. Waldrip	1/29/63
J. M. D. Palmer	1/22/63
M. J. Lindsey	3/9/63
E. W. Miller	3/8/63
D. H. Carpenter	3/15/63
B. J. Hunsucker	3/16/63
J. W. Hunsucker	3/4/63
S. B. Greer	3/22/63
C. M. Pannell	1/28/63
F. V. Morgan	1/7/63
B. E. Clayton	1/21/63
B. R. White	1/31/63
C. P. Kelly	1/12/63
H. L. Johnson	1/12/63
D. L. Gould	1/11/63
J. E. Taylor	1/19/63
D. R. Bryant	1/22/63
F. T. Johnson	2/13/63
M. G. Fitch	2/8/63
Mrs. C. R. Fish	12/1/62
H. G. Gandy, Jr.	1/29/62
J. V. Luidsey	1/24/63
O. L. Calston	1/21/63
M. Humphreys	3/2/63
E. O. Anderson	3/9/63
C. J. Smith	3/16/63
P. L. Garner	3/2/63
W. E. Harris	3/27/63
E. L. Churchill	3/29/63

(2) Question 20—Duties and Obligations

As indicated by names and dates, below, numerous white registrants gave identical or virtually identical answers to question 20, which requires applicants to state some of the duties and obligations of citizenship under a constitutional form of government. The standard answer is: "obey the laws and vote," or a slight variation thereof.

Name	Date of Application
H. E. Thompson	1/12/62
D. E. Cash	1/22/62
J. C. Hatcher	1/22/62
L. M. Tomlinson	1/30/62
B. M. Mangrum	1/30/62
H. M. Barber	2/2/62
R. C. Taylor	2/3/62
G. M. McCollum	2/6/62
B. L. Shelby	2/17/62
R. H. Handle	2/21/62
H. G. Gardner	2/26/62
W. K. DeVore	2/27/62
J. L. Yeager	2/23/62
D. B. Yeager	2/23/62

[fol. 2156]

B. S. Gullick	10/6/62
T. H. Sanderson	10/13/62
E. J. Hayes	10/15/62
Mrs. V. M. Beasley	(Not Known)
T. D. Skelton	2/24/62
G. F. Brown	3/9/62
J. Zanola	5/17/62
D. T. Gossett	5/10/62
Mrs. D. T. Gossett	5/10/62
B. B. Arnold	5/19/62
C. P. Locke	5/26/62
D. W. Abel	6/2/62
V. H. Tice	7/27/62
A. F. Mills	8/18/62

Name	Date of Application
G. R. Ash	8/18/62
H. M. Howell	9/14/62
Mrs. L. M. Joyner	9/8/62
Harold Butler	10/22/62
Mrs. J. Conway	10/6/62
J. C. McClure	11/5/62
A. C. Carpenter	1/28/63
R. G. Carpenter	1/28/63

(3) Corrections

As indicated by names and dates, below, numerous white registrants changed answers on their forms, invariably for the better.

Name	Date	Q.
H. L. Reed	1/27/62	19
J. E. Tapp	1/8/62	9
D. S. Sullivan	1/23/62	Oath
C. W. Lyles	3/23/62	20
B. G. Shelby	3/24/62	18
J. Zanola	5/17/62	12
B. B. Arnold	5/19/62	14
N. G. Lane	8/4/62	19
G. R. Ash	8/18/62	19
L. A. Rather	9/10/62	19
J. C. McClure	11/5/62	12
W. A. Alexander	3/9/63	19
B. E. Lemons	1/21/63	8
P. A. Hunsucker	1/26/63	19
D. L. Young	1/26/63	19
J. S. Hicks	1/31/63	19
T. G. Tomlinson	1/31/63	19
O. E. Brisco	2/23/63	19
J. Fitch	2/1/63	19
Mrs. G. W. Coleman	3/4/63	19
J. A. Smith	3/6/63	12
E. F. Norsworthy	3/30/63	19
W. H. Barry	3/26/63	19
J. E. Woods	8/18/62	20
C. V. Clayton	8/27/62	20

c. Grading

The application forms of accepted white applicants executed on the dates indicated below, contrasted with those of rejected Negro applicants, show favored treatment to white persons in grading of the application form.

[fol. 2157] White Registrants

Name	Date
J. R. Clayton	3/3/62
F. C. Johnson	2/1/62
Sister M. Clarona	1/17/62
H. G. Gardner	2/26/62
B. W. Mangrum	1/30/62
W. K. Devore	2/27/62
R. B. Kloha	10/21/61
J. E. Tapp	1/8/62
B. A. McAuley	4/24/62
L. D. Bumpas	3/24/62
G. C. Owens	6/1/62
M. F. McClure	7/31/62
N. C. Sorrell	9/12/62
W. M. Thomas	9/18/62
R. C. Scott	10/15/62
B. S. Gullick	10/6/62
D. R. Robinson	10/5/62
Mrs. B. H. Dunlap	11/3/62
E. O. Anderson	3/9/63
E. H. Edlin	3/2/63
G. A. Goode	3/15/63
Clevon Sims, Jr.	3/16/63
K. L. Covington	3/27/63
W. H. Barty	3/26/63
Mrs. E. A. Contini	1/29/63
B. R. White	1/31/63

Rejected Negroes

Name	Date
W. H. Bowens	3/12/63
J. W. Moffin, Jr.	12/20/62
L. B. Bruce	3/16/63
D. F. White	12/19/62
E. Naylor	1/5/63
E. Naylor	2/23/63
R. C. Anderson	3/12/63
J. White	1/22/63
B. Pryor	1/7/63
G. Jones	12/19/62
Almus Jones	1/8/63
G. B. Reddick, Jr.	1/8/63
Irene Harris	1/29/63
C. F. Brittenum	9/7/62
James Robinson	7/30/62

[fol. 2158] Part III

The following Negroes have been denied the right to vote by the use of the constitutional interpretation test (question 19) or the requirement for stating the duties and obligations of citizenship under a constitutional form of government (question 20), or both. The dates are those on which the applications were executed.

Joycistine White	1/22/63
Bernice Pryor	1/7/63
J. W. Moffin, Jr.	12/20/62
Donald F. White	12/19/62
Gordon Jones	12/19/62
E. M. Naylor	1/5/63
Irene Harris	1/29/63
Katherine Kellar	4/27/62
L. B. Bruce	7/30/62
Clara Jones	7/28/62
Myrtle P. Sims	7/25/62
E. Davis	7/17/62
Frances D. Mims	7/25/62
James Robinson	7/30/62
E. M. White	8/23/62

H. S. Boyd, Sr.	8/8/62
Bernice Shields	8/11/62
C. A. Scott	8/3/62
C. M. A. Ford	9/17/62
R. L. Bullock	9/8/62
C. F. Brittenum	9/7/62
L. B. Bruce	3/16/63
W. H. Bowens	3/12/63
R. C. Anderson	3/12/63
J. W. Stewart	12/27/61
V. D. Street	1/2/62
B. J. Longrest	1/3/62
S. J. Brown	1/30/62
N. B. McCraven	10/19/61
H. W. Byers	10/27/61
M. L. Adams	11/7/61
O. L. Fant	11/13/61
G. B. Reddick, Jr.	11/21/61
A. W. Moore	1/3/62
H. S. Boyd	1/30/62
G. B. Reddick, Jr.	1/8/63
Almus Jones	1/8/63

[fol. 2159]

Johnson, Frank L.
5/21/57

#19. It means you are free to vote for anybody you want to and you will never be harmed.

Omission on Form:

Question 12

Neal, Willie B.
10/30/58

#19. As a citizen of Mississippi we has a right to be heard rigits of creed orl color by peaceably asembling.

Error or omission on Forms:

Q. 14. unanswered; Q. 15. answered "no"; Sec. 11 was recopied and interpreted in the space provided for the interpretation.

Dungan, Mrs. Lora E.
3/25/57

#19. To abide by the laws and rules of your government and so that there will be peace in the world.

Omission on Form:

Question 12

Koestler, Thelma R.
2/19/58

#19. The people of the United States will always be free to vote according to their own convictions and this government is for the people.

Omission on Form:

Q. 14. unanswered.

Regan, John B.
8/21/58

#19. The right of all americans people of United States of america to Vote & obey the Law of the State.

(correction page)

[fol. 2160] The following five applicants all received Section 30.

Section 30

There shall be no imprisonment for debt.

Cecil Paul Brent 6-6-60	You can't be put in jail for enoughtoness debt.
Mary Katherine Cline 1-19-62	I must pay all my debt.
Girer Coper 4-7-62	I must Pay all Debts.
Ethel Mae Griffin 5-21-62	I must pay all my debts.
Earl Clarence Arnold 10-8-62	all debts must be paid.

(corrected)

[fol. 2161] Franklin County #48

Part II

Application Forms

1 & 2. Number of forms and periods which they cover—12/27/62—7/13/63.

White		Negro	
Accepted	88	Accepted	5
Rejected	0	Rejected	4

Analysis of Forms

(a) Selection of Constitutional Sections

Only section 67 of the Mississippi Constitution was used for all applicants. Section 67 states—"No new bill shall be introduced into either house of the legislature during the last three days of the session."

(b) Assistance to White Applicants

(1) The following group of white registrants had identical or substantially identical answers to question #19. Each followed the basic pattern "During the last three days of the legislature no

new bill shall be introduced." (No Negro registrant had a pattern answer). This group also gave very similar interpretations of question #20 following the pattern "Uphold the constitution, obey the law, vote."

[fol. 2162]

Date of Application	Name of Registrants	Question 19 & 20
2-1-63	Taylor, Walter B.	Q. 19—During the last three days of session no new bills can not be introduced into either house. Q. 20—uphold the constution and obey all the laws
2-2-63	Laird, Gletter G.	Q. 19—During the last three days of the session no new bill shall be introduced into either house of the legislature. Q. 20—A good citizen should live up to the constitution & vote.
2-2-63	Brown, John N.	Q. 19—During the last three days in which both houses of legislature are in session, a new bill can not be introduced. Q. 20—A eitizen of the Unted state of america should uphold the laws set forth in the constitution and at all times be loyal to his country.
2-9-63	Arnold, Walter (Mrs.)	Q. 19—During the last three days of this session no new bill cannot be introduced into either house. Q. 20—obey the laws of the United States and up hold the laws and vote for your house.
2-9-63	Goodson, Mina J.	Q. 19—During the last three days of the session no new bills can be introduced into either two houses of the legislature. Q. 20—A good citizen should up hold their constitution and obey all laws that have been set for them to follow through the years.

[fol. 2163]

Date of Application	Name of Registrants	Question 19 & 20
2-19-63	Burria, Robert L.	Q. 19—During the last three day of the session no new bill shall be introduced into either house of the legislature. Q. 20—A good citizen should up hold the constitution and the law.
3-1-63	Steele, J. E. (Mrs.)	Q. 19—During the last three days of the session new bills shall not be introduced into either house. Q. 20—The upholding of the constitution. The obeying of law & order.
3-2-63	Romsey, Janet	Q. 19—During the last three days of the session, no new bill shall be introduced into either house of the legislature. Q. 20—I think that a good citizen should participate in and help in anyway that is for the good of all. Also, a citizen should vote, cooperate, and never neglect anything which he knows is important to his state or government.
3-13-63	Bryd, Richard W.	Q. 19—During the last three days of the session of the legislature no new bills can be introduced. Q. 20—A good citizen should obey the laws of the constitution and vote for the person which should obey this constitution.

[fol. 2164]

3-22-63	Beasley, Patricia H.	Q. 19—During the last three days of the session, no new bill shall be introduced into either house of the legislature. Q. 20—Voting when becoming of age. Obeying all laws set forth by state. Upholding the rights of constitution.

Date of Application	Name of Registrants	Question 19 & 20
5-16-63	Pickering, R. A.	Q. 19—During the last three days of the session no new bill shall be introduced into either house of the legislatare Q. 20—a good citizen should vote and uphold the constitution of the United States and the state of Miss.
5-16-63	Pickering, Betty Jo	Q. 19—During the last three days of the session no new bill shall be introduced into either house of the legislature. Q. 20—a good citizen should be loyal and exercise his or her right to vote.
5-16-63	Walters, Johnnie, Sr. (Mrs.)	Q. 19—During the last three days of session no new bill shall be introduced into either house of the legislature Q. 20—To perform ones duties and obligations during local & state made elections. To pay poll taxs to uphold the obligations in the welfare of my country by obeying its laws.
[fol. 2165]		
5-20-63	Lazarus, Carolyn Ann	Q. 19—That during the last three days in the session no new bill may be introduced into either house of the legislature. Q. 20—Know the canidates for public officie and know their qualifications. Vote.
6-5-63	Hubbard, Evelyn C.	Q. 19—During the last three days of the session no new bill shall be introduced. Q. 20—To vote & uphold the laws of the state.
6-27-63	Rushing, Marilyn V.	Q. 19—During the last three days of session in the house of the legislature no new bill can be introduced. Q. 20—under a constitutional form of government the duties of a good citizen are to obey all the laws, uphold the constitution. Vote in all elections.

Date of Application	Name of Registrant	Question 91 & 20
6-29-63	Emfinger, Willard R.	Q. 19—During the last three days of the session, new bills shall not be introduced into either house of the legislature. Q. 20—A citizen should obey the laws and uphold the constitution in of the United States and of Mississippi, should vote.

[fol. 2166] (2) The following two registrants who registered on the same day gave identical answers to question #19. Their answer to question #20 were also similar.

Date of Application	Name of Registrants	Question #19 & 20
1-26-63	Magee, Doris F.	Q. 19—Either house of the legislature shall add no bills during the last (3) days of the sessions Q. 20—(1) uphold the law (2) support the constitution.
1-26-63	Ratcliff, Linda J.	Q. 19—Eigher house of the legislature shall add no bill during the last three days of the sessions Q. 20—The duties of citizen should obey the laws and supposed the constitutional. & support the government.

(3) The following white registrants gave similar interpretations of Questions #19 & 20.

Date of Application	Name of Registrants	Question #19 & 20
3-20-63	Price, Carban	Q. 19—Bills cannot be introduced into the legislature of either house during the last three days of a session Q. 20—A good citizens is obligated to up hold the constitution and to vote, also to obey state and local laws.

[fol. 2167]

Date of Application	Name of Registrant	Question 19 & 20
6-14-63	Ryan, Ouida E.	Q. 19—New bill should not be introduced into either house of legislature during the last three days of the session. Q. 20—He or she should obey the laws that set befor us.
1-30-63	Farrell, Otis Lee	Q. 19—new bills can not be interoduced into eather house of the legislature during the last three day of the session Q. 20—to support the government and not violate any of the laws
1-31-63	Ryan, Charles M.	Q. 19—New bill cannot be introduced into either house of the legislature during the last three days of the session Q. 20—Uphold the law and the constition of the U.S.A.
2-7-63	Arnold, Walter W.	Q. 19—New bills can not be interduced to the legislature in the last three days of session Q. 20—To uphold the law & live a good citizen of county, state, & United State of America
3-29-63	Smith, Nora (Mrs.)	Q. 19—New bills cannot be introduced into the legislature during the last 3 days of sessions Q. 20—A good citizen should obey the laws and be truthful. aperson you can depend on.

[fol. 2168] Pike County #54

Part I

C

The following Negro citizens of Pike County were not permitted to register to vote because their interpretations or duties of citizenship did not satisfy the registrar. All events described below occurred at the Circuit Clerk's office in Pike County.

57046	Summer 1961 Rejected Holmes-R	He went to register with W. B. Dillon, Aaron Tobias and Georgia Tobias. He filled out a form and interpreted a section of the Constitution. Mr. Holmes looked at his interpretation and told him he wanted an essay and told him to study more and come back.
57045	Spring 1963 Rejected Holmes-R	He went to register with Johnny Frank. He filled out a form and was given a section of the Constitution to interpret. Mr. Holmes told him he could not pass him on his interpretation and told him to study some more and come back.
57037	Spring 1962 Rejected Holmes-R	She went to register with her husband. She filled out a form and interpreted a section of the Constitution. Mr. Holmes looked at her interpretation and said she had not condensed it enough. She was rejected.
57047	About 1957 Rejected Holmes-R	She registered to vote in Harrison County. She went to register to vote in Pike County in 1957. She filled out a form and was given a section of the constitution to interpret. She could not interpret the section and was rejected.

[fol. 2169] Pike County #54

Part II

(Supplement)

The application for registration photographed by the plaintiff in Pike County have been recounted. There are 630 applications from April 20, 1960-December 12, 1962. These are subdivided as follows:

Whites

Whites accepted who have signed the Registration Book—458.

Whites accepted who had not yet signed the Registration Book at the time of photographing—21.

Whites rejected—17.

Whites who filled out applications which were ungraded at the time of photographing—11.

Negroes

Negroes accepted—55.

Negroes accepted who had not yet signed the Registration Book at the time of photographing—2.

Negroes rejected—64.

Negroes who filled out applications which were ungraded at the time of photographing—2.

[fol. 2170] The following table is a more accurate count of the section distribution in Pike County by race from the date of the first form, April 20, 1960, to the date of the second photographing December 12, 1962.

Section Distribution

Section	# of Wards	White	Negroes
BL.	—	3	2
2	59	0	1
6	54	0	1
17	76	0	1
20	30	2	0
22	31	7	1
25	32	1	0
29	27	1	0
41	82	21	1
42	74	4	0
44	98	27	21
47	45	1	0
53	80	3	4
54	38	1	0

Section	# of Wards	White	Negroes
55	110	0	2
59	136	0	1
64	69	0	1
65	51	5	0
70	35	1	0
73	22	2	0
74	26	3	0
75	19	4	0
[fol. 2171]			
76	21	3	0
77	33	10	1
78	36	13	0
79	82	8	12
81	80	2	5
87	87	4	10
88	55	4	2
95	100	1	1
96	54	1	1
100	93	0	3
103	60	0	3
105	53	78	9
106	56	40	3
110	115	2	2
111	80	2	5
112	180	0	1
119	32	1	0
150	52	103	11
153	40	39	1
154	55	64	5
160	96	1	3
161	90	0	2
165	135	0	1
173	58	7	1
176	52	4	0
[fol. 2172]			
177	99	2	0
180	100	0	1
187	55	7	1
188	51	1	0
190	77	0	0
202	82	7	1
203	58	11	1
204	85	5	1
208	54	1	0
232	50	1	0

[fol. 2173] b. Assistance to White Applicants

Substantially similar ideas appear in answer to Q.20, the duties and obligations of citizenship, on many of the forms filed by white persons. These ideas are "Pay taxes legally assessed to you", and "Do all I can to make my community a better place to live and help others do the same." Either or both of these ideas appear in the answers to Q.20 on the following forms of accepted white applicants:

Name	Date
Horn, Mae W.	4-20-60
Trussell, Sarah E. D.	6-30-60
Yates, Edward H.	8-5-60
Alexander, Pearl L.	8-8-60
Farnham, Billy B.	10-21-60
Martin, Elizabeth	10-21-60
Kuyskendall, Betty Sue	10-31-60
Albritton, Bass Joe	11-2-60
Grey, Paul Edward	1-5-61
Sanders, Virginia	1-14-61
Dekie, D. B.	1-16-61
McGehee, Eva Mac J.	1-21-61
Thornton, Barbara Ann M.	1-25-61
Brister, Belle Martin	1-27-61
Prestridge, Vallie M.	1-27-61
Creel, Earline W.	1-30-61
Creel, Hugh M.	1-30-61

[fol. 2174]

DaQuilla, Doris L.	1-30-61
D'Aquiller, Pearl Audrey	1-30-61
Hayes, Lillie M.	1-30-61
Konkiel, Sister Marie	1-30-61
Thompson, Kathryn B.	1-30-61
Bullock, Evelyn M.	1-31-61
Lewis, Helen Marie W.	1-31-61
Tarver, Vance L.	1-31-61
Robert, Iva Earl H.	2-1-61
Wascom, Priscilla K.	2-1-61
Hollingsworth, Geneva I.	2-4-61
Fortenberry, Annette M.	2-10-61

Name	Date
Parsons, Betty F.	2-10-61
Kerr, James C.	3-1-61
Sassone, Ethel F.	4-10-61
Barnes, Janet B.	4-17-61
Reeves, Wallace T.	5-13-61
Felder, Dickie Sue	7-15-61
Robinson, James	8-30-61
Freeman, Charles Alton	9-2-61
Tucker, Virginia Joyce B.	9-11-61
Quin, Zula C.	9-29-61
Lyons, Jimmie Lou	11-4-61
Clark, Jimmy D.	11-24-61
Williams, Lee Monroe	10-7-61
Stayton, Milton	12-21-61
Brumfield, Ruby	1-18-62
Buckner, James B. Jr.	1-23-61

[fol. 2175]

Jackson, Willie Mae C.	1-23-62
Simmons, Juanita C.	1-23-62
Davis, Martha Mae	1-25-62
Thompson, Avis Laurence	1-26-62
Lowery, John W.	1-29-62
Williams, Ephil E.	1-29-62
Edward, Stanley	1-30-62
Roberts, Evelyn W.	1-30-62
Cooper, Marilyn M.	1-31-62
Forrest, Shirley W.	1-31-62
Wolfe, Annie M.	1-31-62
O'Neal, Lexie	2-2-62
Sartin, Myron D.	2-13-62
Simmons, Hilton H.	2-13-62
Bardwell, Phyllis J.	2-14-62
Raborn, Molly Irene	2-17-62
Griffith, Emma E.	3-7-62
Griffith, James E.	3-7-62
Bryant, Hazel L.	3-10-62
Miller, Gwendolyn K.	3-20-62
Williams, Virgie S.	3-23-62
Shaw, Golda H.	3-27-62
Fore, Wiley M.	4-5-62

Name	Date
Yawn, Charles L.	4-5-62
Yawn, Joy Annette	4-5-62
McKenzie, Willard A.	5-5-62
Pickett, Hilton R.	5-5-62

[fol. 2176]

Turnage, Willie F. (Mrs. Jerry)	5-5-62
Simmons, Mavis L.	6-6-62
Campbell, Eddice	6-7-62
Simmons, Genevieve D.	6-8-62
Chandler, Lorraine R.	6-12-62
Johnson, Marie Brumfield	8-23-62
Carr, Sarah Frances	9-10-62

[fol. 2177] The persons in each of the following groupings applied to register on the same day and had very similar answers to question 20.

Date	Name
2-6-61	McElwee, Charles V. Jr.
"	McElwee, Marjorie W.
2-1-62	Alexander, Florine
"	Alexander, Geneva M.
"	Alexander, Irene
1-23-62	Simmons, Juanita C.
"	Jackson, Willie Mae C.
1-30-61	Simmons, Thelma Irene C.
"	Simmons, Billy S.
12-30-60	Bigner, Eunice E. M.
"	Bigner, William N.
1-30-61	Creel, Earline W.
"	Creel, Hugh M.
1-30-62	Roberts, Evelyn W.
"	Roberts, Stanley

C. Grading

An examination of the application forms in Pike County indicates that a higher standard is used in grading the constitutional interpretations of Negro applicants than is used in grading those of white applicants.

[fol. 2178] The following seventeen rejected Negro applicants filled out application forms and gave a reasonable interpretation of a section of the Mississippi Constitution and a statement of duties and obligations of citizenship:

Sec.	Date	Name
150	10-18-60	Moses, Mable Ruth C.
79	10-?-60	Bates, Mary Ethel
112	8-9-61	Nobles, Dorothy
165	8-10-61	Nobles, Mary Nell
81	8-10-61	Nobles, Matthew
44	8-15-61	Butler, Patsy Ruth
79	8-18-61	Butler, Patsy R.
87	8-29-61	Waterman, Betty Jo
44	10-13-61	Harrell, Marion E.
111	10-19-61	Dillon, Edna Mae
105	12-28-61	Snead, Isaac C.
154	2-16-62	Martin, Willie
53	3-10-62	Bryant, Hazel L.
44	3-10-62	Bryant, Jerry L.
44	6-5-62	Campbell, Walter G.
41	6-5-62	Campbell, Mary A. Mrs.
53	7-12-62	Martin, Miss Emogene

The following four Negro rejected applicants wrote a statement setting forth their understanding of the duties and obligations of citizenship but their answers were marked wrong on their application forms.

Date	Name
8-10-61	Mary Nell Nobles
8-10-61	Matthew Nobles

[fol. 2179]

8-15-61	Patsy R. Butler
8-18-61	Patsy R. Butler

Mr. Holmes indicated to several Negro applicants that they were failed because their answers to questions 19 and 20 were not complete enough. An examination of the accepted application forms indicates that many white accepted applicants gave answers to question 19 which were no more

complete than those given by Negroes. An example of this type of discriminatory grading is found on examining the application of Edgar A. Bridgman dated 1-31-62. He was asked to interpret section 105. This section reads:

> "The legislature shall provide for the enumeration of the whole number of inhabitants, and the qualified electors of the state, once in every ten years; and the first enumeration shall be made during the two months beginning on the first Monday of June, 1895 and the legislature shall provide for the same by law."

Mr. Bridgman's accepted answer was:

> "This section means that the legislature shall provide for the counting of all of the people in the state every ten years. This first count will be made on the first Monday, June, 1895 and during the following two months. The legislature shall make necessary laws to carry out counting."

Mr. Bridgman's answer said nothing about counting the qualified electors and thus was an incomplete interpretation. Comparing Mr. Bridman's interpretation with the interpretation given by a rejected Negro Isaac C. Snead indicates different grading standards.

[fol. 2180]

Mr. Snead's answer was:

> "The government shall take a count or census of the inhabitants and the qualified electors of the state each ten years. The legislature provides for this and the first count shall be made during the two months beginning on the first Monday of June, 1895."

Mr. Snead, though rejected, had the more complete answer.

[fol. 2181]

Part III

The following Negroes have been deprived of the right to vote because of the interpretation test, duties test, or the perfect form requirement:

Date	Name
10-4-62	Allen, Elouise Duncan
10-4-62	Allen, Willie Clay
8-10-61	Ashley, Bertha N.
7-21-61	Barnes, Huston
—	Brumfield, Thad
10-25-62	Cade, Garland Benjamin
8-29-61	Caston, Jesse Lee
8-30-61	Caston, Jesse Lee
12-5-61	Clabron, William
10-25-61	Dillon, Edna Mae
10-24-61	Dillon, Edna Mae
7-24-61	Grey, Sanifer
8-7-61	Heads, George W. Jr.
8-9-61	Heads, George W. Jr.
10-4-61	Johnson, Melvin J.
1-23-62	Matthews, Henrene
8-29-61	Morgan, Ruth Mae
10-18-60	Moses, Mable Ruth C.
7-12-62	Marshall, Mrs. Justina
8-13-62	Marshall, Justina
8-13-62	Martin, Emogene
2-1-62	Moore, Mrs. Edith M.
10-19-61	McMorris, Willie Mae W.

[fol. 2182]

8-10-61	Nobles, Johnnie F.
10-13-61	Nobles, Johnnie F.
8-31-61	Nobles, Johnnie Frank
8-10-61	Nobles, Marie
8-31-61	Nobles, Marion
8-10-61	Nobles, Mary Nell
8-10-61	Nobles, Matthew
1-29-62	O'Neal, Lexie
2-2-62	O'Neal, Lexie
1-30-62	Pinkney, Mrs. Edna M.

1-29-62	Pittman, James
10-25-61	Robinson, James
1-27-62	Robinson, James
1-31-61	Simmons, Leila H.
1-30-61	Stalling, Kenneth
8-7-62	Stalling, Arthur
2-1-62	Strickland, Evelyn C.
8-29-61	Thompson, Margrett Odell T.
8-10-61	Tobias, Aron
8-10-61	Tobias, Georgia Ann
10-4-60	Tobias, Georgia
8-30-61	Waterman, Betty Jo
8-23-61	Williams, Claude
8-29-61	Williams, Dorothy Jean
10-3-61	Nobles, Mary Nell
8-29-61	Waterman, Betty Jo

[fol. 2183]

12-28-61	Snead, Isaac C.
8-9-61	Nobles, Dorothy
7-12-62	Martin, Miss Emogene
2-16-62	Martin, Willie
10-13-61	Harrell, Marion E.
10-19-61	Dillon, Edna Mae
6-5-62	Campbell, Mary A. Mrs.
6-5-62	Campbell, Walter G.
10-?-60	Bates, Mary Ethel
3-10-62	Bryant, Hazel L.
3-10-62	Bryant, Jerry L.
8-18-61	Butler, Patsy Ruth
8-15-61	Butler, Patsy Ruth

[fol. 2184] Rankin County #55

Part II

Application Forms

1. Number of Forms

A written demand for the inspection of voting records was made on Mr. J. R. Bradshaw, Circuit Clerk and Registrar of Rankin County on August 24, 1962. An application for an order requiring production of voting records was

filed by the Attorney General on September 10, 1962. An order dated December 10, 1962 granting the application was stayed on March 15, 1963. The stay was removed on August 21, 1963, and the records were inspected and photographed on August 30 and 31, 1963.

4,333 forms were photographed. Of these, there are 4,199 white and 50 Negro accepted forms.

There are 32 identified Negro rejected forms. Mr. Bradshaw has advised departmental attorneys that he does not recall any white applicants who have not been accepted.

Thirty three applicants were not found in the registration books and 19 applications were not acted upon at the time of photographing. These records are not included in the following analysis:

	White	Negro
Accepted	4,199	50
Rejected	0	32

[fol. 2185] 2. Period Form Cover

The earlies form photographed is dated January 1, 1957; the most recent form photographed is dated August 8, 1963.

3. Analysis of Forms

a. Selection of Sections of the Constitution.

From January, 1957 to August, 1963, 97% of the 4,199 white applicants received one of the following 3 sections;

Section 207

Separate schools shall be maintained for children of the white and colored races.

Section 101

The seat of government of the state shall be at the city of Jackson and shall not be removed or relocated without the assent of a majority of the electors of the state.

Section 11

The right of the people peaceably to assemble and petition the government on any subject shall never be impaired.

16 percent of the Negro applicants received one of the above sections. 84% of the Negro applicants received sections of greater length and complexity than the above including sections concerning treason against the state (§ 10); the removal of judges for reasonable cause on grounds insufficient for impeachment (§ 53); the appropriation of educational funds and the support of sectarian school (§ 208); the fictitions issue or increase of stock of [fol. 2186] transportation carriers (§ 196); and the exercise of the right of emenent domain (§ 190). No white applicant received any of these sections.

Distribution of Sections by race Sections given white applicants

Section	White	Negro
207	1,636	1
101	1,595	10
11	914	0
157	8	0
30	4	0
12	3	0
150	2	0
167	2	0
7	1	1
20	1	0
28	1	0
73	1	0
102	1	0
108	1	0
123	1	0
185	1	0
#18 blank	27	0

Sections given to Negro applicants

10	0	8
154	0	8
53	0	6
208	0	6
142	0	4
42	0	4
196	0	3
22	0	3
190	0	2
25	0	2
48	0	2
214	0	2
116	0	2

Section	White	Negro
68	0	2
24	0	2
13	0	1
15	0	1
18	0	1
35	0	1
55	0	1
103	0	1
105	0	1
120	0	1
[fol. 2187]		
201	0	1
207	0	1
219	0	1
251	0	1
264	0	1
267	0	1

[fol. 2188]

Part II

Application Forms

b. Assistance—

(1) Questions 18, 19, and 20 completed by persons other than applicant—Application forms for 1,295 white applicants between January and August 1963 were analyzed, 24% of these indicate that questions 18, 19, and 20 were completed by a person or persons other than the applicant. The application forms for 1957-1962 have not as yet been similarly analyzed.

(2) Standard answers to questions 19 and 20—

Of the 1636 white applicants who received Section 207 to copy and interpret, 57% exhibited substantially identical or substantially similar answers to questions 19 and 20 as follows:

[fol. 2189]

Section 207: Separate schools shall be maintained for children of the white and colored races.

Substantially Identical Standard Answers

	Question 19	Question 20	No.
1.	White and colored shall not attend the same school	Pay taxes, vote in elections, obey laws	281
2.	White and colored shall attend separate schools	Vote in elections, obey laws, pay taxes	142
3.	White and colored children will never go to school together	Vote in elections, obey laws, pay taxes	69
4.	State shall maintain segregated schools	Voting, paying taxes, obeying the laws	70
5.	The schools of Mississippi are not to be integrated	Vote, obey the law, pay taxes	71

Substantially Similar Standard Answers

1.	The state will always maintain separate schools	Voting, obeying the laws	186
2.	State law says white and colored shall not attend the same school	Vote in election, obey laws, pay taxes	108
3.	We will always have separate schools for white and colored children		71

[fol. 2190] Of the 1,595 white applicants who received Section 101 to copy and interpret, 52% exhibited substantially identical or substantially similar answers to Questions 19 and 20 as follows:

Section 101: The seat of government of the state shall be at the city of Jackson, and shall not be removed or relocated without the assent of a majority of the electors of the state.

Substantially Identical Standard Answers

	Question 19	Question 20	No.
1.	The capitol of Mississippi will always be in Jackson unless moved by the majority of voters	To vote, pay taxes, obey the laws	364
2.	The capitol of Mississippi will always be in Jackson unless moved by the majority of the electors	"	259
3.	Jackson will always remain the capitol of Mississippi unless a majority of the electors vote to remove it	"	115

Substantially similar to standard answers—

1.	Jackson will always remain the capitol of Mississippi unless a majority of the electors vote to remove it		86

[fol. 2191] Of the 914 white applicants who received Section 11 to copy and interpret, 54% exhibit substantially identical or substantially similar answers to questions 19 and 20, as follows:

Section 11: The right of the people peaceably to assemble and petition the government on any subject shall never be impaired.

Substantially Identical Standard Answers

	Question 19	Question 20	No.
1.	The people will always have the right to petition the government	To vote, pay taxes, obey the laws	226
2.	The people have a right to petition the government on any subject	"	112
3.	The people always have a right to assemble and petition the government	"	34
4.	The people have the right to ask the government for most anything	"	29

Substantially Similar To Standard Answers

1.	The people have a right to petition the government on any subject	To vote, pay taxes, obey the laws	100

[fol. 2192] Rankin County

Part III

The following Negro applicants were denied registration because of the requirements of Section 244 of the Mississippi Constitution. The precise grounds of denial are unknown.

Name	Address	Date of Application
Shots, Tommie L. Sr.	S. Pearson	3-17-62
Phillips, Sarah J. (Mrs.)	S. Pearson	3-17-62
Singleton, Georgia M.	S. Pearson	3-19-62
Taylor, Georgia (Mrs.)	S. Pearson	3-24-62
Cooper, Allie M.	S. Pearson	3-24-62
Hicks, Rubin	Star	1-30-59

[fol. 2193] Covington County #67

Part II

1&2. Number of Application Forms. Period covered is from 6/5/62 to 7/12/63, however there are also 12 forms for 1958, 1959 and early 1962 which were not destroyed.

	White	Negro	Unknown
Accepted	398	10	3
Rejected	0	0	0

3. Analysis of Forms

A. Selection of Constitutional Sections

6/25/62-7/12/63

Sections	No. of Applicants	White	Negro	Unknown
123	325	314	9	2
30	68	67	—	1
207	2	2	—	
119	1	1	—	
35	1	1	—	
Blank	2	2	—	

12 Forms prior to 6/5/62

Sections	No. of Applicants	White	Negro
123	4	4	—
30	2	2	—
207	2	2	—
19	1	1	—
5	1	—	1
Blank	2	2	—

B. Assistance to Applicants

Section 123 of the Mississippi Constitution is:

> "The governor shall see that the laws are faithfully executed."

Two hundred and two of the 314 white persons given Section 123 gave substantially identical answers as their interpretations. These answers fall into four patterns which are shown below, some of which are not responsive to the section to be interpreted.

[fol. 2194] (1) The following white registrants wrote substantially similar answers as their interpretations. The Governor shall call the legislature into session when needed.

Their duties of citizenship are also substantially similar.

Name & Date	Q. 19 (Interp.)	Q. 20 (Duties)
Lee, Annie P. 3–31–62	The governor shall call the legislature in session when needed.	A good citizen should be law abiding.
Aultman, Gerald Lee 6–25–62	Governor shall call Legislature into session when needed.	A good Citizen should be law abiding and live by a Good rule.
Aultman, Dovie Elizabeth 6–25–62 (Mrs.)	The governor shall call the Legislature in Session when needed.	A good citizen should be law abiding and live by the Golden Rule.
Gardner, Daniel Thomas 8–4–62	The governor shall call the legislature in session when needed.	A good citizen should be law abiding and live by the Golden Rule.
Cowart, Mrs. Maude L. 8–13–62	The governor shall call the legislature in session when needed.	Abide by the law and try to enforce them.
Kelly, Jerry Clark 9–15–62	The Governor shall call legislature in session when needed.	Should be law abiding and live by the golden rule.

Name & Date	Q. 19 (Interp.)	Q. 20 (Duties)
Stubbs, Virginia 9-18-62	The governor shall call the legislature in session when needed.	A good citizen should be law abiding and keep the country in his formost thoughts. He should do what is best for the whole country.
[fol. 2195]		
Stuckey, Carol H. 10-6-62	The governor shall call the legislature in session when needed.	A good citizen shall obey the laws
Odum, Betty Y. 11-24-62	The governor shall call the legislature in session when needed.	A good citizen should obey the law and obey the golden rule.
Pollard, James W. Jr. 12-4-62	The governor will call the legislature into session when needed.	A good citizen should be law abiding and vote in all elections.
Miller, Mrs. Jeff 12-5-62	The Governor shall call the legislature in session when needed.	A good citizen should obey all laws.
Jordan, Versie 12-15-62	The governor shall call the legislature in session when needed.	A good citizen should abide by all laws & vote.
Burham, Tommie L. 12-17-62	The Governor shall call the Legislature in session when needed.	A good citizen should abide by all laws and vote.
Cook, James 12-20-62	The governor shall call the legislature in session when needed.	The duties of a good citizen should obey all laws and vote.
Morgan, Rufus Jr. 12-27-62	The governor may call the legislature in session when needed.	A good citizen should abide by all laws and vote.
Clark, Jasper Dillard 12-29-62	The governor shall call the legislature in session when needed.	A good citizen should obey all laws.
Ponder, Peggy Catherine K. 12-31-62	The governor shall call the legislature in session when needed.	He shall uphold the law, vote.
Pickering, Paul Dan 1-1-63	The Governor shall call the legislature in session when needed.	A good citizen should abide by all laws.
Arpiniton, James D. 1-2-63	Shall call legislature in session when needed.	law abiding & voting.
Sullivan, Laura Grace 1-2-63	The governor shall call the legislature in session when needed.	Abide by all laws and vote.

[fol. 2196]

Name & Date	Q. 19 (Interp.)	Q. 20 (Duties)
Allen, Bob Jake 1-2-63	The governor shall call the legislature in session when needed.	A good citizen should be law abiding and a voter
McDaniell, Minnie B. 1-5-63	The government shall call the legislature into session when needed.	A good citizen be law abiding and live by the golden rule.
Napeir, Mrs. Ina 1-11-63	The governor shall call the legislature in session when needed.	A good citizen should go to church obey all laws he can & vote.
Glisson, Kathleen 1-23-63	The governor shall call the legislature in order when needed.	A good citizen should obey all orders and to go to church.
Glisson, Bobby Clay 1-26-63	May call the legislature to meeting when need to.	A good citizen should obey all laws and vote.
Garner, Ruby Nell 1-28-63	The Governor calls the legislature in session when needed.	By being brought up in a good church, and understanding right from wrong at all times and places and doin right by our fellow men and by voting in every election for the people who think can undertake the responsibilitie of the U.S.A. and Miss.
Sanford, Shirley J. 1-30-63	The governor shall call the legislature together when needed.	Shall go to church. Pay all debts. Take an interest in all State & government elections. To uphold all state la
Leonard, Mrs. W. E. Jr. 2-1-63	The governor may call the legislature when he needs them.	Obey the laws set forth, be a church member & attend also pay all debts.

[fol. 2197]

Lovette, James Franklin 5-25-63	The governor may call the legislature when needed.	A good citizen should obey all laws and go to Church.
Jackson, Bobby Euge 5-25-63	Governor may call the legislature	All good citizens will obey all law.
Rainey, Haskel 5-25-63	The governor can call the legislature	A good citizen should obey all laws.

Name & Date	Q. 19 (Interp.)	Q. 20 (Duties)
Williams, John Wiley 6-10-63	The Governor may call the Legislature if he need to.	A good citizen is one who obeys the law. Goes by the laws of our Government. and to maintain peace in Miss.

One Negro gave an interpretation and statement of duties of citizenship which were substantially similar to those in this category.

Owens, Dorothy Jeanette 1-5-63	The governor shall call the legislature in session when need.	A good citizen should be law abiding and live by the golden rule

(2) The following white registrants wrote substantially similar answers as their interpretation.

The Governor may call the National Guard when needed.

Their duties of citizenship are also substantially similar.

Name & Date	Q. 19 (Interp.)	Q. 20 (Duties)
Hart, James Walter 1-31-63	The governor can call out the national Guard if he wants to.	Should pay all debt He should go to church He should vote.
[fpl. 2198]		
Rogers, Milton 3-26-63	Call out National Guard when needed.	Should attend church regularly and pay all debts.
Norris, Effie 3-21-63	The governor may call the national guard when needed.	A good citizen should obey the laws and attend church.
Hudson, Leffie Major 4-1-63	Call the National guard when you need them.	A good citizen should go to church and pay all his debts.
Burnham, Ella Ruth 3-28-63	The Governor may call the national Guard when he needs them.	A good citizen should go to church and obey the laws
Davis, Tom 3-30-63	The governor may call the National guard when he needs them.	A good citizen and go to church, and obey all laws.
Davis, Barbara H. 3-30-63	The governor may call the National guard when he needs them.	A good citizen and go to church, and obey all laws.

Name & Date	Q. 19 (Interp.)	Q. 20 (Duties)
Mauldin, Mrs. Bervin 3-30-63	the governor may call the National guard when need.	A good citizen should go to church and obey all laws.
Mauldin, Mrs. Charles B. 3-30-63	The governor may call the National guard when need.	A good citizen should go to church and obey all laws.
Dozier, Mrs. H. A. Jr. 3-29-63	The governor shall call the National guard when needed.	A good citizen should obey all laws, and attend church.
Coleman, Willie H. 4-2-63	The governor can call the National guard at any time.	Everybody should go to church.
Johnson, Mrs. Janice Mae 4-8-63	The governor may call out National Guard when needed.	A good citizen should vote for the person he thinks will make a government in the community. A good citizen should obey the law. A good citizen should take part in Church and community organizations.
[fol. 2199]		
Batte, Tommy 4-13-63	He can call the National Guard when he needs them.	A good citizen should go to church and obey all laws.
Rainey, Charlene 5-25-63	The governor shall call out the National guard if he needs one.	A good citizen should obey all laws and go to church.
Ishee, Ruby Irene 5-25-63	The Governor shall call out the National Guard if he needs one.	A good citizen should obey all laws and go to church.
Clark, Ruby F. 6-22-63	The governor can call out the National Guard.	A good citizen should obey all laws and attend his church.

(3) The following white registrants wrote substantially similar answers as their interpretation.

The Governor can issue pardons.

Their duties of citizenship are also substantially similar.

Name & Date	Q. 19 (Interp.)	Q. 20 (Duties)
Cercio, Mrs. Cora 1-2-63	The governor can issue Pardons.	A good citizen should live by the golden rule.
Rawls, Mrs. Magdaline 12-2-63	The Governor can pardon people.	A good citizen should vote.
Rogers, James Preston 1-4-63	Governor may issue pardons.	Obey all laws and vote.
Crosby, Ruth E. 1-7-63	The governor can issue pardons.	A good citizen should vote and obey all laws.
Davis, Travis 1-7-63	The governor can iss[illegible] pardons.	A good citizen shall obey all laws.
Aultman, James Coy 1-10-63	The governor issues pardons.	A good citizen should vote.
[fol. 2200]		
McKenzie, Hollie F. 1-11-63	The governor may grant pardons.	A person should obey all laws and vote.
Harvey, Susie 1-29-63	He may issue pardons.	Go to church and vote.
Sanford, Lizzie 1-30-63	The governor can pardon	A good person should go to church and obey the laws.
Bush, Lula Mae 1-30-63	The governor can issue pardons.	A person ought to vote and pay tax.
Norris, Frank Arnold 2-1-63	Governor can get pardon.	A good citizen can vote.

(4) The following white registrants wrote substantially similar answers as their interpretation. The Governor enforces the law.

Their duties of citizenship are also substantially similar.

Name & Date	Q. 19 (Interp.)	Q. 20 (Duties)
Miller, John Morris (Mrs.) 4–8–63	Enforce the laws.	To obey the laws.
Williamson, Alson 5–4–63	The Governor enforces the laws.	Every one should vote and go to church.
Hudson, Mrs. LaRue 5–4–63	The governor may enforce the law.	A good citizen should go to church & vote.
Roberts, Mrs. Duncan 5–6–63	The governor enforce the law.	Every Body should go to church.
Madden, Lizzie Mae 5–11–63	The governor may see that the laws are enforced.	Good citizen should obey all law and attend church.
Duckworth, Irvin I. 5–11–63	The governor is responsible for law enforcement.	A good citizen should obey all laws and vote.
[fol. 2201]		
Dickens, Bertha 6–5–63	The governor of law are enforce.	A person shall go to church pay all one's debts.
Lott, Mrs. Charles H. 6–7–63	The Governor of this state will see that the local and State laws are enforced.	Should obey all laws, vote, pay taxes.
Sanford, James C. 7–3–63	That the governor will enforce all laws made by the people of the State of Miss.	Assist in any way possible to enforce the laws of the State and Nation. Vote when ever possible. Recognize and obey all laws. Be ready to serve his State and Nation.

(5) The following white registrants wrote substantially similar answers as their interpretations. They all wrote a combination of two or more of the following phrases:

1. Call the legislature into session
2. Call the National Guard
3. Issue Pardons
4. Enforce the laws

Their duties of citizenship are also substantially similar.

Name and Date	Name and Date
Rutland, Mary Cornelia 1-29-63	Rutland, Lila 1-28-63
Easterling, Keeneth D. 1-29-63	Easterling, Keeneth D. 1-29-63
[fol. 2202]	Patrick, Zera 1-29-63
Knotts, McAuther 3-30-63	Rutland, James Franklin 1-31-63
Bush, Travis 1-30-63	Easterling, Jean M. 3-18-63
Rogers, Wayne R. L. 1-30-63	Morgan, Mrs. Lorena L. 3-26-63
Sanford, Haskell David 1-31-63	Yates, Woodard Hugh 7-1-63
Shoemake, Thomas Earl 1-31-63	Hudson, Kelvia Jean B1.
Loftin, Harry Randal 1-31-63	Hood, Clarence Robert 1-2-63
Broom, Ruby Nell 1-31-63	Strebech, Miss Alice 1-1-63
Williamson, Robert A. B1	Leggett, Sonia Ann 1-11-63
Mauldin, Alvin 7-5-63	McQueen, Mary Jane 1-19-63
Aultman, Mrs. Margie R. (Mrs. Oliver D.) 3-14-63	McRaney, Doris N. 1-19-63
Quick, Dorothy Louise 5-11-63	Stringer, Odius C. Jr. 1-23-63

Name and Date	Name and Date
McRaney, Mary Neil 10-24-62	Rogers, Gale Albert 1-28-63
Rogers, Tommy B. 1-8-63	Stevison, Franklin Riley 7-5-63
McRaney, Mrs. Ray 1-10-63	Bates, Winnie Davis 3-5-63
Pitts, Irene 1-30-63	Barber, Mattie 3-5-63
Herrin, R. Glen 1-31-63	Lott, Ella Jeanette 3-9-63
McRaney, Sarah Jean 1-12-63	Hutcherson, Ava Ruth 3-9-63
[fol. 2203]	McLaurin, Ruth 2-2-63
Coleman, Billy H. 3-14-63	Little, Mrs. John Paul 3-8-63
Miller, James Earl 3-16-63	Taormina, Frank H. 5-21-63
Knight, Annie Ruth 6-29-63	Welch, Isabell 6-29-63
Davis, Gergrude E. 1-9-63	Bullock, Shirley Faye 6-29-63
Blackwell, Marie G. 1-10-63	Stuky, John E. 2-1-63
McLaurin, Mrs. L. B. 1-23-63	Knight, J. W. 2-1-63
Scarborough, Nono Mae 1-28-63	Crosby, Evelyn L. 2-4-63
Moverise, Johnny Earl 1-28-63	Crosby, Bobby Joe 2-4-63
Parish, Roger Dexter 1-29-63	Collins, Julia Grace 2-4-63
Moulds, Carrie Ann 1-29-63	Wade, Dimple R. 2-4-63
McGren, Mary Lou 1-29-63	Furrell, Benton 2-12-63
Stewart, Sammie Ray 1-30-63	Vineyard, Loren Neal Jr. 2-25-63
Leonard, Glynn F. 1-29-63	Stewart, Bobby Whyatt 3-4-63

Name and Date	Name and Date
McLimore, Mrs. James H. 1-31-63	Brooks, Gaston Wheeler, Jr.
McKinley, Dorothy Lee 2-2-63	Bates, Norman 3-5-63
McLaurin, Lindon 2-3-63	Norris, Cortis 3-5-63

[fol. 2204]

Knight, Mary Magdalene
3-11-63
Sellers, Martha G.
(Mrs. Clem)
3-16-63
Knight, Mrs. W. P.
3-23-63
Keyes, Sara Jane M. (Mrs.
John)
3-27-63
Clayton, William Franklin,
Jr.
3-28-63
Stroud, William F., III
4-1-63
Williams, William B.
4-5-63
Williams, Ruth
4-5-63
Duckworth, Ruby
4-8-63
Sanford, Jerry C.
4-10-63
Mitchell, Sarah Nell
4-11-63
Lott, Jackie Lee
4-20-63
Bagley, Worth Weldon
4-20-63
Wise, Carl Leonard
4-23-63
Wise, Mrs. C. L.
4-23-63

Name and Date	Name and Date
Mooney, Willie Curtis 4-29-63	
Bynum, William R. 6-[illegible]-63	
[fol. 2205]	
Parker, Willie Everett 2-1-63	Bagley, Mrs. Ward 3-5-63
Pickering, Tommy Ross 2-1-63	Pope, Clyde 3-22-63
Harvey, Evans Jr. 2-4-63	Clayton, Sandra Melville 3-28-63
Harvey, Jewel Faye 2-4-63	Lowery, Paul K. 3-30-63
Lightsey, JoAnn Elizabeth 2-5-63	Taylor, Roxie Lee 4-5-63
Pope, Ethel 2-25-63	Johnson, Basil 4-8-63
Wade, Gerald 3-4-62	Brown, Lee Max 4-11-63
James, Ben Bura 3-19-63	Lee, Jimmy Dale 4-11-63
Speed, Linda Lou B. 3-22-63	Graves, Edward A. 4-12-63
Ashley, Mrs. Dorothy Ella (Mrs. Rudolph) 3-27-63	Saulters, Bellie G. 4-12-63
Yawn, Ruby Doris 3-28-63	Davis, Mary Alice 4-15-63
Norris, Shelby R. 3-30-63	McGowan, Douglas N. 4-15-63
Herrin, Mrs. Estelle Florence 3-30-63	Ingram, Hermon Eugene 2-1-63
Rogers, Mrs. Fred K. 4-13-63	Vineyard, William P. 2-11-63
Ponder, Jerry Lee 4-22-63	Cowart, Mrs. L. L. 2-20-63
Gibson, Seth 5-13-63	Warren, Eunice 3-2-63

Name and Date	Name and Date
Carter, Mrs. Marbeth Y. (Mrs. James A.) 6-29-63	Aultman, Mrs. Lorena 3-22-63

[fol. 2206]

Heggins, Jimmy F.
3-23-63
Graves, Ronald C.
4-6-63
Bullock, Jerry
4-6-63
Hynum, Peggy Ann
4-8-63
Hynum, Cecil D., Jr.
4-8-63
Loftin, Kay F.
4-8-63
Cranford, George T., Jr.
4-13-63
Gandy, Sidney D.
4-30-63
Boleware, Millie E.
5-4-63
Adams, Mrs. Guy
5-14-63
Wade, A/C Jerry Mitchell
5-25-63
Allen, Mrs. Tolie
6-12-63
Shows, Gerald D.
6-29-63
Miller, Jerry
9-1-62

Three Negro registrants wrote interpretations and duties of citizenship which were substantially similar to those in these categories.

Name and Date	Name and Date
Mamie Booth 2-15-63	Zula Mae McKay 4-8-63
Pearlie V. Burkharter 3-5-63	

[fol. 2207] C. Grading

The following white registrants were registered to vote though each left questions 18, 19 and 20 and the oath signature blank. Therefore they did not give an interpretation of a section of the Mississippi Constitution or a statement of the duties and obligations of citizenship.

Emmett Ryals	4-25-62	Station Creek Precinct	18, 19, 20—Bl. Oath Sign.—Bl.
Billy Roger Blackwell	5-28-62	Seminary Precinct	18, 19, 20—Bl. Oath Sign.—Bl.

Since the adoption of the perfect form requirement in 1962 many registrants have been registered though their forms contained omissions and blank lines:

90—failed to sign the Application Form Signature
74—failed to sign the Oath Signature
15—failed to list their Election Districts

[fol. 2208] Marion County #74

Part II

Application Forms

1&2. Number of Application Forms

Period includes forms from 9/5/62 to 7/23/63.

White

Accepted—583
Rejected—20
Pending—11

Negro

Accepted—20
Rejected—12
Pending—2

Race not known

Accepted—4
Rejected—3
Pending—0

Selection of Constitutional Sections

Section	White	Negro	Unknown
14	98	7	3
20	1	0	0
22	7	1	0
23	31	1	0
28	12	0	0
30	110	6	2
33	1	0	0
97	1	0	0
98	27	1	2
108	1	0	0
123	144	7	1
130	1	0	0
167	64	5	0
208	5	1	0
209	1	0	0
240	30	0	0
262	1	0	0
263	7	0	0
265	34	2	0
Blank	0	0	1

[fol. 2209] b. Assistance to white applicants.

An analysis of the application forms shows numerous verbatim or almost identical answers to Question 19 (interpretation) and Question 20 (duties and obligations of citizenship).

1. Forms with verbatim or almost identical answers to Questions 19 and 20.

a) The following white applicants were required to interpret § 207 of the Mississippi Constitution ("Separate schools shall be maintained for children of the white and colored races").

	Q—19	Q—20
Bullock, Betty Jo So. Columbia Sept. 5, 1962	"Keep up the schools separated prevent mixing and inter marriage."	'obey the laws of the county and state in Which you live Pay vote tax keep qualified to Vote and take part in all lawful subjects."
Cox, Myrl B. So. Columbia Sept. 5, 1962	"Keepin in the Sc ools Separated Prevents mixing and inter Marriages"	"Obey the laws— the county and state in Which you live pay pole tax keep qulified to vote and take legal part in any lawful Subject."
Elliott, Nellie M. So. Columbia Sept. 5, 1962	"Keeping the Schools separated prevents mixing and inter Marrages."	"Obey the laws of the county and state in which you live pay pole tax keep qulified to Vote, and take legal part in any lawful subject.

The following two white applicants also were required to interpret §207.

	Q—19	Q—20
Peak, Lola M. So. Columbia Jan. 15, 1963	"Separate school to prevent colored and white from mixing and marrying."	"Obey the laws of the state and county and to help enforce them."
[fol. 2210]		
Peak, Herman Ray So. Columbia Jan. 15, 1963	"Separate schools is to prevent colored and white from mixing and marry."	"To obey the county and state laws and to help enforce them."

b) The following white applicants were required to interpret §14 of the Mississippi Constitution ("No person shall be deprived of life liberty or property except by due process of law")

	Group I	
Smith, Ray Arthur June 6, 1963	"No person life, property, or liberty can be taken away from him, except by law."	"Obey the laws of our country."
Brashears, Clara M. Kokomo June 10, 1963	"No person life and liberty or property can be taken except by law."	"Obey the laws of our country."
	Group II	
Martin, Mary Edna Columbia June 10, 1963	"That no person shall be deprived of the life, liberty or property except by a fair trial in accordance with the law of Mississippi.	"To live a christian life and obey all the laws of the United States."
Martin, Elmer F. June 10, 1963	"That no one shall be deprived of life, leberty or property except by due process of law by fair trial in accordance with the laws of Mississippi."	"To live by Gods words and obey laws of the country"

c) The following white applicants were required to interpret §30 of the Mississippi Constitution ("There shall be no imprisonment for debt").

Terry, Claudia F. Foxworth June 7, 1963	"A person can not be sent to prison for owing a debt."	"Obey the law."
May, Mrs. A. H. So. Columbia June 7, 1963	"A person cant be sent to prison for owing a debt."	"To obey the law."

[fol. 2211] d) The following applicants were required to interpret §265 of the Mississippi Constitution ("No person who denies the existence of a Supreme Being shall hold any office in this state").

	Q—19	Q—20
Clark, Charles B. Foxworth Nov. 24, 1962	"That would be a person who didn't believe in God."	"Obey the law and pay your depts."
Lewis, Mrs. Beverly Foxworth Nov. 24, 1962	"That would be a person who didn't believe in God."	"Obey the law and pay your depts."

e) The following groups of applicants were required to interpret §123 of the Mississippi Constitution ("The governor shall see that the laws are faithfully executed").

	Group III	
Turnage, Arnold D. Columbia Jan. 31, 1963	"The govener will enforse all laws."	"Be a good citizen & obey all laws."
Posey, Tinie, Mrs. Columbia Jan. 31, 1963	"The Governor will enforce all laws."	"Be a good citizen"
	Group V	
Reid; John W. June 5, 1963	"The govenor shall see that the laws are carried out or obyed"	"Obeays the law"
McArthus, Doris June 8, 1963	"The governor shall see that all laws are obeyed"	"Obey all laws"
Breland, Buford J. Bogalousa June 9, 1963	"The governor shall see that the laws are obeyed."	"Obey the law."
Rester, Mrs. W. S. Foxworth May 6, 1963	"The governor has to see that the laws are obeyed."	"We must carry out the duties and obey the laws of our government."
Ryals, John H. Foxworth May 11, 1963	"The Governor Shall See that the laws are obayed."	"Obying the laws of the Government."
Crane, Ruth Foxworth June 11, 1963	"The governor shall see that the laws are obeyed"	"Obey the laws of the government"
[fol. 2212]		
Prine, Wayne Columbia June 6, 1963	"The governor shall uphold the laws of the state of Mississippi and see that they are obeyed."	"Obey the laws of our government."

2. Forms with identical or virtually identical answers to question 19. (Constitutional interpretation)

a) Section 14—Group I.

The following applicants include in their answer the phrase "Going through court," or its equivalent.

	Q-19
Forbes, Charlene A. Foxworth Mar. 26, 1963	"a person cannot be deprived of life, liberty, or propty with out first going through court."
Lowe, Charles H. Foxworth Mar. 28, 1963	"a persons life, liberty, or property can not be taken away from him without going through a court."
Skipper, Wynn Columbia Apr. 16, 1963	"No person can be deprived of their life liberty or property without first going through the courts."

b) Section 98—("No lottery shall ever be allowed, or be advertised by newspapers, or otherwise, or its tickets be sold in this state; and the legislature shall provide by law for the enforcement of the provision; nor shall any lottery heretofore authorized be permitted to be drawn or its tickets sold.")

Johnson, Dorothy J. Morgantown Jan. 30, 1963	"No gambling allowed in the State of Mississippi."
Boyd, Elisha Foxworth Jan. 30, 1963	"no gambling allowed in the state of miss."

c) Section 123—("The governor shall see that the laws are faithfully executed.")

The following applicants interpret the section to mean that the Governor shall see that the "laws are obeyed" or its equivalent.

[fol. 2213]

Hodges, Lois T. Pittman June 10, 1963	"The governor sees that the laws are obeyed"
Rankin, Robert M. Columbia June 10, 1963	"The governor sees that the laws are obeyed."

Singley, Winston Cedar Grove June 8, 1963	"The governor see that the laws is obeyed"
Stogner, Wilda O. Foxworth June 11, 1963	"The Governor see the laws are obeyed."
DeLancy, Sanford W. Columbia June 8, 1963	"The governor shall see that laws are obeyed"
Ward, Mrs. George Columbia June 7, 1963	"The governor sees that all laws are obeyed."
Singley, Effel M. Cedar Grove June 7, 1963	"The laws should see that the laws are obeyed"
Stringer, Mrs. Levy Foxworth May 6, 1963	"The Governor sees the laws are obeyed."

3. Assistance on question 20. (duties and obligations of citizenship)

a. The following pairs or groups of applicants had verbatim or substantially identical answers to question 20. (Some of these applicants are also listed above as having similar or identical interpretations in their answers to Question 19.

I

Stringer, Carol E. Columbia Oct. 6, 1962	"Obey and uphold the laws of the Constitutional."
Robertson, Claudia C. Goss Sept. 6, 1962	"To obey and uphold the laws of the Constitution."

[fol. 2214]

Smith, Neda E. Foxworth Sept. 8, 1962	"To obey and uphold the laws of the Constitution."

McNease, Carlene K. Columbia Oct. 10, 1962	"To obey and uphold the laws of the Constitution."
Holmes, Ruby L. W. Foxworth Dec. 20, 1962	"to up hold & obay the laws of the constitutional"
	II
Redwell, Carolyn Oct. 10, 1962	"One must vote and obay the laws of the United States."
Bedwell, Dewitt R. Foxworth Oct. 10, 1962	"One must vote and obey the law of the United States."
	III
Ginn, Lonie R. Kokomo-Stovall Jan. 29, 1963	"Obay the laws."
Lambert, Howard Kokomo Feb. 7, 1963	"Obay the Law"
Lambert, Hattie Kokomo Feb. 7, 1963	"Obay the law"
Reid, John W. Cedar Grove June 5, 1963	"Obeays the law"
Singley, Winston Cedar Grove June 8, 1963	"Obey the laws"
Breland, Buford J. Bogalousa June 9, 1963	"Obey the law."
Martin, James W. Columbia June 10, 1963	"obey the Law."
Smith, James H. Kokomo June 10, 1963	"Obeys the laws."

[fol. 2215]

Hodges, Lois T. Pittman June 10, 1963	"Obey the laws"
Crane, Lillie B. Foxworth June 11, 1963	"Obey the laws"
	IV
Stevens, Loyce J. Morgantown Mar. 12, 1963	"To obey the laws of the united states and to ottain peace in eveyway possible."
Stevins, Ben F. Morgantown Mar. 12, 1963	"To obey the laws of the Government, and to help kept the peace in every way."
	V
Graves, Mae Haddox Columbia Apr. 15, 1963	"Select Honest Honorable and Relieable officials ableing laws."
Graves, Talmadge Columbia Apr. 15, 1963	"Select Honest Honorable and Reliable officials to uphold our Laws."
	VI
Anderson, Gladys C. Columbia May 3, 1963	"A good citizen should consist of being honest, loyal & faithful to the constitution of USA."
Anderson, John B. Columbia May 13, 1963	"It is being honest, Loyal & Faithful to the Constitution of the U.S.A."
	VII
Aaron, Ruth E. Mrs. Foxworth Jan. 4, 1963	"To be law abbiding citizen"
King, Boyd M. Kokomo May 13, 1963	"be a law abiding citizen."

Stomply, Nita L. Columbia May 27, 1963	"Be a law abiding citizen."
Terry, Larue West Side of Marion S. June 4, 1963	"Be a law abbiding citizen."
[fol. 2216]	VIII
Brumfield, Hubert C. Sandy Hook May 29, 1963	"vote, paid your taxes, obey the laws"
Brumfield, Herbert S. Sandy Hook May 29, 1963	"To vote, pay your taxes, obey the laws."
	IX
Horton, Floy E. E. Columbia May 30, 1963	"To obey and uphold the government every way and meet your duties and obligations as a citizen"
Horton, George D. E. Columbia May 30, 1963	"To obey and uphold the government in every way and meet your duties and oblegations as a citizen."
	X
Dairs, Larue Mrs. Foxworth Apr. 3, 1963	"Obey the laws of our government."
Foster, Richard C. June 2, 1963	"Obey the laws of our government"
Brashears, William F. Kokomo June 4, 1963	"Obey the laws of our government."
Prine, Wayne Columbia June 6, 1963	"Obey the laws of our government.

Breland, Hattis O. Columbia June 7, 1963	"Obey the law of our government."
	XI
Brea, Billy Joe Sandy Hook June 8, 1963	"Obey the laws of the government."
Bria, Nita Faye Sandy Hook June 8, 1963	"Obey the laws of the government."
Crane, Ruth Foxworth June 11, 1963	"Obey the laws of the government"
[fol. 2217]	XII
Batson, Luther C. Columbia Jan. 28, 1963	"faithful & truthful to Obey all the laws of all kind"
Batson, Ida O. Columbia Jan. 28, 1963	"Faithful & trueful to Obey all the laws of all kinds."
	XIII
Stewart, Hershell Hattiesburg Jan. 31, 1963	"Obey the law of the county state in which you live and vote for officials Ito enforce the laws."
Singly, John W. Columbia Jan. 31, 1963	"Up holl all law in the country or state you and vote for officials to enforce the law."
Bennett, Harry J. Columbia Jan. 31, 1963	"Obey the law of the county and state and vote for official & maintain the law.''
	XIV
Jones, Patsy G. Foxworth Jan. 31, 1963	"To vote in all elections. To obey the laws."

Jones, Fred L., Jr. Kokomo Jan. 31, 1963	"To voat in all elections. To obey all laws."

The following applicants had similar answers to Question 20.

Robertson, Wilson E. Columbia Sept. 29, 1962	"To obey and uphold the laws of the United States."
Clower, Mrs. Banks Columbia Nov. 2, 1962	"I do understand my duties to obey and uphold the laws of Constitution of the United States of America."
Johnson, Robert E. Foxworth Nov. 6, 1962	"uphold and obay the constitutional of laws."
Smith, George G. Balls Mill, Foxworth Nov. 8, 1962	"up hold and obey the Constitutional of the United States of America."
Swayze, Minnie Lou Columbia Nov. 17, 1962	"To uphold and obey the Constitutional Laws of the United States of America and the State in which I may be living."

[fol. 2218]

McCain, Roy, Jr. Foxworth Dec. 17, 1962	"I AM SUPPOSED TO UPHOLD AND OBEY THE LAWS AND THE CONSTITUTION."
Lott, John S. Foxworth Jan. 21, 1963	"To obey and uphold the laws of the Government of your country."
Buchanan, Janell Foxforth Sept. 29, 1962	"The duties of citizenship under a constitutional form of government would be to uphold and obey the laws of the Constitution."

The following applicants included in their answer to Question 20 a statement to the effect that one should obey the laws and see that they are enforced.

Sanders, Ruby B. H. Sept. 8, 1962	"The duties of citizenship are to obey the laws and help enforce them."
Willoughby, Oscar S. Cedar Grove Dec. 21, 1962	"Obey and help inforce the laws of the Constitution."
Peak, Herman Ray Columbia Jan. 15, 1963	"To obey the county and state laws and to help enforce them."
Peak, Lola M. Columbia Jan. 15, 1963	"Obey the laws of the state and county and to help enforce them."
Anderson, Ellean Foxworth Jan. 29, 1963	"Vote for the right person to be put in office & one that our state and nation. More than one way. This also means find out more about the person you vote and uphold the laws & see to the best of your ability they are enforced."
Brasseal, Kenneth D. Columbia Jan. 30, 1963	"To see that there is liberty and justice for all. We shall see to it that to the best of his ability the laws are enforced."
Sauls, Franklin D. Foxworth Feb. 11, 1963	"Obey all laws & see that they are properly enforced."
Watson, Mrs. Layce Foxworth Feb. 11, 1963	"I must be duly registered. I must show evidence to the officers holding the election that I have paid my poll taxes—I must have resided in this state for two years and one year in the election district. Abide all our laws and see that they are enforced."

[fol. 2219]

Holland, James A. Columbia Feb. 13, 1963	"abide by the Law carprate with The Law and do your part to see That They are enfarst"
Barber, Haril E. Foxworth Feb. 15, 1963	"The government is made up of laws and the civil officer are to enforce them. We also have the fredom to vote. for whom or what we pleas. Abide by our laws and see that they are enforced."
Williams, Effie L. Columbia Feb. 16, 1963	"up hold the Laws see they are inforced"
Johnson, John W. Kokomo Feb. 23, 1963	"You are free to do anything as long as it is done by the law of the United States. To obey our laws and to see that they are enforced."
Barber, Donnie B. Columbia Mar. 8, 1963	"A real honest, ready to help, man are woman that has lived in the United States and live by our laws and try to see that they are enforced."
Thompson, Dimple I. Columbia Mar. 16, 1963	"To be a good citizen is to be friendly. worship God an try to be nice to eveyone Abid by the Constitution law. an try to see that they are inforce"
Forbes, Charlene A. Foxworth Mar. 26, 1963	"voting and up holding the law and seeing that they are enforced to the best of our ability."
Jackson, B. A. Kokomo Mar. 30, 1963	"To vote and to uphold the law to the best I can and see that they are enforced to the best of my ability"

McKenzie, George H. Foxworth Apr. 1, 1963	"Abide by the laws and see that they are enforced exercising your duty to vote"
Ryals, Carrie E. Columbia Apr. 1, 1963	"We must obey and enforce the laws of our country at all times."
Beyers, Delores Apr. 3, 1963	"To be a good citizen you should vote for what you feel is right. We will respect our law, try to see they are enforced."
Hutchins, Shelby H. Columbia Apr. 3, 1963	"Uphold and respect the laws. See that the laws are enforced to the best of my ability."
Dyess, Annie L. Columbia Apr. 11, 1963	"Abide by the law and see that they are enforce to the best of my abiliti"

[fol. 2220]

Pierce, Barbara Ann L. Tylertown May 13, 1963	"To be a good citizen and to have a citizenship, you need to be a good citizen and do the best you can for your country and your fellow man. We want to Recept our Law and see that they are enforced."
Stringer, George B. Foxworth May 4, 1963	"A good citizen is a person who have lived in his State at least six months or more, and have never broke any laws so have never commited any crimes. avide by the Laws and see that they are enforced."
Crawford, Elsie E. Foxworth May 10, 1963	"You should be curtious and understandig of other peoples feeling. Obey law makers and God. We should uphold laws of our government and try to see that they are inforced."

Johnson, Donald R. Columbia May 13, 1963	"Do not break any laws and see that all are enforced."
McKinsey, William Sandy Hook May 14, 1963	"All peoples work together to make the government a better and to serve the people better and that the peoples are the government and help to inforce the laws of our country."
Lambert, Ellis L. Columbia May 31, 1963	"THIS MENT WE WILL LET THE LAWS CARRIED OUT THE DUTY BY THE HELP OF PEOPLE. We repest are Laws add to see that are inforced."
Singley, Robert June 1, 1963	"Carrang out laws of our state and see thet they are enforced."
Jackson, Sythe R. Foxworth June 5, 1963	"Honesty, truthfull obey all the laws of the constituion and see that they are enforced."
Davis, Mrs. Wannell June 11, 1963	"A person must be clean, sober, Honest. We want to respect our laws and see that they are enforced."
Luther, Everett E. Columbia June 15, 1963	"Obey the laws and try to see that they are in force."
Singley, Peggy J. Columbia June 26, 1963	"I should obey all the laws and help to enforce the law."
Buckley, Byron J. Columbia July 19, 1963	"As a citizen of a state, county or city it is my duty as a citizen to obey all laws and help t enforce them if called upon to do so. Served on the jury if called upon and take an active part om the various activities for the betterment of our country."

[fol. 2221] C. Grading.

(1) Recopying of Section or interpretation

The following applicants merely recopied the section assigned them as their answer to question 19.

Dunaway, Wanda J. R. Kokomo Feb. 1, 1963	"Ther shall be no imprisonment for debts."
Thornhill, James C. Columbia Feb. 2, 1963	"Ther shall be no imprisonment for debt."
Kiral, Andrew Columbia Apr. 5, 1963	"There Shall Be No Imprisonment For Dept."
McCain, Clyde Foxworth May 15, 1963	"There shall be no emprisonment for debt."
Webb, Courtney Columbia Jan. 14, 1963	"The Governor shall see that the laws are faithfully executed."
Case, Albert L. Columbia Jan. 27, 1963	"The Governor shall see that the laws are faithfully exactued."
Giles, Blankford A. Columbia Jan. 31, 1963	"The Governor shall that the laws are faithfully executed."

2. Interpretations which are not responsive to the section

The following applicants had unresponsive answers as their interpretation of the section assigned them.

Aaron, Ruth E. Foxworth #123 Jan. 4, 1963	"I would be glad to help in any way possible any governor or any other officer in any way that is right."

Sanders, Eva Net Columbia #167 Feb. 28, 1963	"All people should believe in the Constitution of Mississippi and should have live by the means of it. I think. and we have a better place to live. The officers that we elected should know the work they are appointed to do before they are elected. The officer should be good citizens of believe in the constitution goverment."

[fol. 2222]

Smith, Janice L. Columbia #23 June 11, 1963	"That it is your duty to obey all the laws."

3. Wrong and right

The following white applicants, in answering Question 19, first gave a nonresponsive answer and then gave a standard correct answer.

Section 30

Smith, Mrs. Clyde Columbia May 29, 1963	"If all cistisans of Miss. would abide by state lawes, there would be no? prision dubts to pay. There shall be no imprison for dubt."
Hedgepeth, Valdrea E. Morgantown May 16, 1963	"People should not be sent to prison for a debt if there is chances to pay, they should pay debts. If sick there be some kind of way for them to be helped."
Barber, Donnie D. Columbia Mar. 8, 1963	"When one are somebody, gets in debt and gets without work, are gets handicapped etc. they should not be imprisoned In other word a person can not be put in jail are imprisoned in any way for oweing a debt."

Thompson, Dimple Irene Columbia Mar. 16, 1963	"Pay your debt and be honest with everyone. You can't put a person in jail for not paying a debt."
Forbes, Jonas B. Sandy Hook Feb. 26, 1963	"That I should not do anything to cause me to feel imprisonment to the citizens of the U.S.A. or the Lord Jesus Christ. Have a clear consus at all times. I shall not neglect to pay my debts so as to cause me to be sent to Prison for doing so. Therefore a Person cannot be sent to iPrison for oweing a debt."
McKenzie, Jerry W. Foxworth Mar. 1, 1963	"A man should be gived a job; and be make to work out his debts than to be sent to prison where he can't. A man cannot be sent for imprisonment for owe a debt."
Turnage, Forrest, Jr. Tylertown Mar. 6, 1963	"The Constitution of Mississippi gives the people of the State the right to be to pay their bills without any fear of imprisonment. A person don't have to be afraid of going to jail because he owes someone. A person cannot be put in jail for owing a Debt."

[fol. 2223]

Crain, Rita J. Tylertown Feb. 9, 1963	"Sometimes a person cannot fully be held responsible for a debt therefore imprisonment would not be an example of our liberty. By giving people chances and helping them in freedom to work out their debts, people are less apt to have as many debts. No one can be jailed for owing a debt."

Section 123

Wisecup, Mrs. Raymond Columbia Feb. 28, 1963	"I feel people will obay the thing that the governor tell you to do an vote for whom they wish—an see that no laws ar executed but those that are good, for Mississippi people—it is the duties of the governor to see that the laws are enforced."
Broome, Edna G. Columbia Mar. 19, 1963	"I believe the governor should be a christian which would help him very much in seeing that the laws are faithfully executed. The governor being head of our state it is his duty to see that the laws are enforced."
Graham, Patsy R. Columbia Apr. 22, 1963	"I think that the law is one of the most excuted thing in Mississippi. I hope it will stay that way under the governor's orders. The governor is head of states & duties are to see that they are infored."
Lambeft, Mrs. Shirley Columbia May 31, 1963	"We will do his job if lall will respect the law. And all concern, by doing the right things. He is to see that the laws are inforsed."
Smith, Rachel S. Sandy Hook Mar. 15, 1963	"Section 123, I believe should mean that the governor would try to the best of his ability to abide by the laws of the constitution as well as the laws of God. To use his knowledge to the best of his ability for the benefif of his state and also his country. The duties of the governor are to see that the laws are enforced."

Negro Applicants

There does not appear to be any pattern of standard answers indicating that help was received by Negro applicants in filling out their forms.

[fols. 2224-2241] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action Number 3312

[Title omitted]

ORDER OF THREE JUDGE COURT TAKING MOTIONS UNDER ADVISEMENT—November 5, 1963

This Cause coming on to be heard before a statutory three judge court at Meridian, Mississippi, on October 30, 1963, on motions of the State of Mississippi to dismiss this suit for the reasons therein assigned; and the Court having heard arguments of counsel thereon:

It Is Now Ordered and Adjudged by the Court:

(1) That said motions are taken under advisement by the Court on briefs filed, and the parties are invited to file any further independent briefs desired in support of said motions within ten days after this date;

(2) That the order of this Court herein dated September 23, 1963, is vacated; and pending a decision by the Court on said motions, the parties may resume all discovery processes desired by them and available to them under the Federal Rules of Civil Procedure.

Ordered, at the instance of and for the entire Court, this November 5, A. D., 1963.

Harold Cox, United States District Judge.

[fol. 2242] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action Number 3312

UNITED STATES OF AMERICA, Plaintiff

v.

STATE OF MISSISSIPPI; ROSS R. BARNETT, JOE T. PATTERSON, HEBER A. LADNER, AS MEMBER OF THE MISSISSIPPI STATE BOARD OF ELECTION COMMISSIONERS; H. K. WHITTINGTON, CIRCUIT CLERK AND REGISTRAR OF AMITE COUNTY; MRS. PAULINE EASLEY, CIRCUIT CLERK AND REGISTRAR OF CLAIBORNE COUNTY; J. W. SMITH, CIRCUIT CLERK AND REGISTRAR OF COAHOMA COUNTY; MRS. MARTHA TURNER LAMB, CIRCUIT CLERK AND REGISTRAR OF LEFLORE COUNTY; T. E. WIGGINS, CIRCUIT CLERK AND REGISTRAR OF LOWNDES COUNTY; WENDELL R. HOLMES, CIRCUIT CLERK AND REGISTRAR OF PIKE COUNTY, Defendants

Transcript of Hearing of October 30, 1963

APPEARANCES:

Honorable Robert E. Hauberg, United States Attorney, Jackson, Mississippi; Messrs. John Doar and Robert Owen, Department of Justice, Washington, D. C.; All Appearing for the Plaintiff.

Messrs. Dugas Shands, William A. Allain, Jr., Peter Stockett and Charles Clark, Attorney General's Office, Jackson, Mississippi; Honorable T. F. Badon, Liberty, Mississippi; Honorable Joe T. Drake, Port Gibson, Mississippi; Honorable Leon Porter, Clarksdale, Mississippi; Honorable Aubrey Bell, Greenwood, Mississippi; Honorable [fol. 2243] W. G. Burgin, Jr., Columbus, Mississippi; Honorable Semmes Luckett, Clarksdale, Mississippi; Honorable Chester Curtis, Clarksdale, Mississippi; Honorable Hardy Lott, Greenwood, Mississippi; Honorable W. H. Jolly, Columbus, Mississippi; Honorable J. O. Sams, Jr., Columbus, Mississippi; All Appearing for the Defendants.

Be It Remembered that on, to-wit: Wednesday October 30, 1963, the above styled and numbered cause came on for hearing before the Honorable Ben F. Cameron, United States Circuit Judge, Honorable John R. Brown, United States Circuit Judge, and Honorable William Harold Cox, United States District Judge, on motions, at Meridian, Mississippi, in the Eastern Division, when the following proceedings were had and entered of record:

By Judge Cameron:

I have doubt about the right of the United States to bring this suit at all and I have doubt about why the individual defendants are joined and what is the connection between them that makes this a suit which can be entertained as against by the Government against the State of Mississippi and against the individuals and I have doubt about whether the State of Mississippi or any state can be sued in this action. Now I would like for the Government to tell me in as few words as they can what the theory is for under which the United States brings this action, whether [fol. 2244] its under Statute 1971 or whether the Constitution or whether its from decisions. I didn't find any decisions directly in point. I found quite a lot of dictum or argument in this Douglas case and Lassiter and other cases we do not intend to hold and so forth. I imagine that the Government was getting into the vacuum by what was not held in the Lane case, the Arkansas cases and the Douglas case. Of course we went through this at great length on prior occasions in Darby against Daniel and a great deal was conceded there that evidently is not conceded here; for instance the NAACP attorneys agreed that Constitution of 1890 was a valid enactment; the specific clause which was amended I believe in 1955 they attacked only the amendment and of course the Government now claims the whole thing is invalid but it may be that they set claim on the argument that its invalid because it was an act of conspiracy to keep negroes from voting or that its invalid because its been used solely for that purpose through the years and I would like for you all to take about twenty or thirty minutes and give me your ideas in general about that, Mr. Doar, if you will please sir.

By Judge Cox:

Before Mr. Doar starts I would like for somebody to tell me why the five registrars are proper parties to this suit why eighty-two registrars shouldn't be indispensable parties and the suit shouldn't be dismissed for lack of necessary and proper parties if these five registrars are even proper parties.

[fol. 2245] By Judge Cameron:

Proceed now, gentlemen, if you will, I know its not in order but we are going to question to get at what we had any how.

By Mr. Doar:

If the Court please, this suit is a suit brought by the United States against the State of Mississippi and certain of its officials for the purpose of determining the constitutionality of various state statutes and constitutional provisions of the State of Mississippi with respect to the procedures and standards that are to be applied in connection with registration for voting in Mississippi. The suit then is basically in the nature of a declaratory judgment action which is authorized by Section 1971 of the United States Code. Now as I understand the Court's question, Judge Cameron's question is why is this does the Government of the United States have the power or the authority to bring this type of suit against the State and second, or maybe that's the second issue. The first question is does the Government of the United States have the power and the authority to bring an action contesting the constitutionality of state statutes.

By Judge Cameron:

Well, in general I know the Raines case held in that case and in the Lincoln County, Alabama case which I was one of the ones got bumped in they that you could sue the [fol. 2246] state there because all the individuals were non est but this seems to be a suit not for A, B, C and D but for all negroes, maybe three-quarters of a million of them, against the State of Mississippi and if you are proceeding

under 1971 it occurred to me that you have to bring yourself within the end of that statute and maybe I'm wrong about what's involved because I have had very little time to work this out but you have stated in general.

By Mr. Doar:

And as I understand Judge Cox's question was why are the five, only five, six registrars joined as defendants in this case shouldn't the six registrars enjoined aren't the other seventy six registrars of the state indispensable parties to the suit and shouldn't the action be dismissed for failure to join indispensable parties. Now——

By Judge Brown:

Well, the reverse of that may be present too if they are merely here for illustrative purposes say to illustrate practices going on generally then are they should they be parties at all and that's one of the questions we dealt with once before.

By Mr. Doar:

That's right, Your Honor. In bringing this suit against the State as well as the six registrars in Mississippi, Your Honor, the State was selected as a defendant because first [fol. 2247] of all this case involved state law, the constitutionality of state law and under Section c of 1971 as amended by the 1960 Act the Congress of the United States provided that acts and practices of registrars shall be deemed the acts of the State and the state will be joined as a party defendant. Now with respect to the particular case that Judge Cameron had reference to uh the case of U.S. versus Alabama that case involved a factual situation where there were no registrars but it is our position first, Your Honor, that the statute cannot be you give effect to the plain meeting of the amendment to Section C of 1971 which provided that the acts of the registrar shall be deemed that of the state and the state may be joined as a defendant that this cannot be read to include just those factual situations where there are no registrars in being and the cases that have interpreted that amendment, Your Honor, in the district courts and the court of appeals have

universally held that the state is a proper party under that statute. Its true that in some cases no injunction is issued against the state and in the last case that Judge Cox decided in the case of U.S. versus Wood the State was dismissed from the action but I did not read Judge Cox's opinion to mean that the state could not be joined as a party where there was an existing registrar under that amendment to section 1971 c.

By Judge Cox:

You couldn't get that out of that because it wasn't [fol. 2248] necessary.

By Mr. Doar:

I agree with that, Your Honor.

By Judge Cameron:

What did we hold on the Wood case?

By Mr. Doar:

You haven't had the case, it was just decided the other day.

By Judge Cameron:

I mean we decided it and sent it back didn't we.

By Mr. Doar:

Well, Your Honor, that case involved Wood you are talking about another Wood case where the state was not a party.

By Judge Brown:

That was injunction against criminal prosecution.

By Mr. Doar:

That's right. That was a different case, Your Honor.

By Judge Cox:

What do you understand that word deem to mean, is that a prima facia case, is that what the statute is trying to say that it shall be deemed to be state action, does that mean it shall be prima facia subject to rebuttal or do you understand it to be absolutely conclusive?

[fol. 2249] By Mr. Doar:

No, I understand for the purpose of joining the state.

By Judge Cox:

It says deemed.

By Mr. Doar:

Yes. I understand the provision to provide the state is a proper party defendant and may be sued.

By Judge Cameron:

We held in the Department of Agriculture case a fellow raised too many peanuts and tried to eat them around the fire at night that deem meant absolutely conclusive it established in other words it had no ifs, ands and buts about it and as usual I wrote a dissent in that and there's two sides to it I hope but there the majority held that deem meant that it is, it is the action of the state.

By Judge Cox:

You might run afoul of due process if there's such a thing.

By Mr. Doar:

Well, in answer to Judge Cameron's first question the State was selected as a defendant because of the authority of the 1960 amendment to Section 1971c and the state was selected as a defendant because this case involved the unconstitutionality of state statutes. Now the five local——

[fol. 2250] By Judge Cox:

Do I understand that they are just a formalistic party or an actual litigant?

By Mr. Doar:

No, I regard them very uh I regard them as an actual litigant.

By the Court:

Not just there for window dressing or legalistic purposes?

By Mr. Doar:

Not put there for window dressing or legalistic purposes at all but put there because this involves a very, very clear issue between the law of the state and the law of the land and if Congress has the power if Congress authorizes the suit against the state if there ever was a factual situation where the suit should be against the state this is it. Here you have the United States of America challenging the entire scheme of registration in Mississippi. What more uh what better way to peacefully resolve the constitutional issue than to have the issue resolved between the Federal Government and the State Government.

By Judge Brown:

But now you have slipped off into another thing have you. This is not the question as I understood Judge Cameron wanted some enlightenment on was the right of the [fol. 2251] United States to bring the suit against either the registrar or the other state officials as such and not the question of the amenability of the State of Mississippi to suit as a defendant.

By Judge Cameron:

I asked three questions really. How can the United States maintain at all and second what is the relevance of all the testimony you want to take of what different individuals have done to your suit saying that these enactments are per se ipso facto illegal and the third is can you sue the state. We have a case neither one of you cited over here in

Alabama that Judge Rives and I said that the union and every state in it are immune to suit unless they consent and Judge Brown wrote a special concurring opinion saying that's not true. I don't doubt the difficult material we are on there.

By Judge Brown:

Now cert has been granted so I don't know who's right.

By Judge Cameron:

Has it been granted?

By Judge Brown:

Just been granted. That's the Pargon versus Alabama Dry, Alabama State Dock Commission.

By Mr. Doar:

Well, the Government's theory, Your Honor, was that there was no constitutional barrier for a suit by the United States against the State.

[fol. 2252] By Judge Cameron:

But is there any authority for it from the Supreme Court?

By Mr. Doar:

Well, the case of uh, the case of the United States versus, in the civil rights field?

By Judge Cameron:

Yes sir.

By Mr. Doar:

Well, first of all let me say that since the case of the United States versus Texas involving a boundary dispute there's authority that the United States can sue a state.

By Judge Cameron:

Well, didn't they sue in the Supreme Court?

By Mr. Doar:

Yes, they did sue in the Supreme Court.

By Judge Cameron:

That's what the constitution says if we are going to follow the constitution. If the big heads are going to sue the little heads they have to go in the Supreme Court.

By Mr. Doar:

But I think in the case of the United States versus California the suit was brought in the District Court.

By Judge Cameron:

That's correct, that's on the railroad operation and [fol. 2253] business.

By Mr. Doar:

I believe that the statutes although the statutes can provide for suits against the state to be commenced in a district court and that is what our theory is the statutes have provided.

By Judge Brown:

Do you think you could bring this suit without 601 or whatever it is?

By Judge Cameron:

1971c.

By Mr. Doar:

Yes, we think we can but we don't think its necessary for the Court to reach that decision.

By Judge Brown:

What is that based on, just inherrent nature of the national sovereign?

By Mr. Doar:

No, its based upon the language of 1971a and 1971c first of all.

By Judge Cameron:

That's what he said, without them could you sue?

By Mr. Doar:

Well, he didn't say, excuse me, Your Honor. I am talking about 1971a without the 1960 amendment. Now you decided in the U. S. versus Alabama case without the 1960 [fol. 2254] amendment that the case uh you could not bring a suit against the state. Now we argued that the Court was wrong on that and we took an appeal to the United States Supreme Court and the Court said that that issue was not necessary for decision because of the statute but our position remains the same and that this could be done under 1971 absent provision of the acts and practices of the registrar shall be deemed those of the state.

By Judge Cameron:

But the Supreme Court said in that case that we are merely saying that because the statute says so and nobody challenges the constitutionality of the statute and we leave wide open the question of whether in such a case Congress can give the right to sue a state and also about three weeks ago, I reckon not yet published, Judge Rives and Judge Hayes and I in a suit your suit against Atkins and others over there at Selma held that the question of whether the state could be sued was not passed on and it was left as a wide open question because we looked back at the Macon County case and that's what the Supreme Court had done. Now as I understand it the other side claims that the right to sue in the Macon County, Alabama case existed because of the facts of that case everybody had quit or died or moved away and wasn't anybody else to sue and the Supreme Court merely said we look at the statute and it says you can sue so go ahead and sue the state and then but we [fol. 2255] don't decide whether that's constitutional or not. I wonder if you have got any authority, Court of Ap-

peals would be better than District Court, but have you got anything from the Supreme Court that ever resolves the reservation they held in the Alabama case that we will not pass on whether the statute under which you proceed is constitutional or not.

By Judge Brown:

I am wondering if in the last Lynd opinion, its a per curiam, did we affirm the injunction against the State?

By Mr. Doar:

Yes, you did.

By Judge Brown:

We had so much in that case I can't recall. I know Mr. Stockett argued for the state. Was the constitutionality of 601 raised in that case. I don't think we wrote on it.

By Mr. Doar:

I don't think it was, Your Honor.

By Mr. Stockett:

No, Your Honor.

By Mr. Doar:

The problem uh the fact is that in many cases or at least several cases the Court of Appeals and the Supreme Court held that and affirmed cases where the state has been sued under 1971 but the constitutional issues have never been fully briefed or argued or has an opinion been written on [fol. 2256] them to my knowledge, Judge Cameron.

By Judge Cameron:

Well, then it is open for us, we listen to the Court of Appeals for this Circuit and all others but we are not bound by it and to my mind a great deal the Court of Appeals for the Fifth Circuit has written is not good law. I think we worked too fast and too far and we didn't give time for consideration and I wouldn't feel bound to follow that, I

would feel persuaded. If the question is open that's what I am asking and the Supreme Court has not foreclosed what it held up in the Alabama case, that is the constitutionality of 1971c as applied to the state.

By Mr. Doar:

Well, I would like to refer to your decision in the case of U.S. versus Alabama which Judge Hutchinson wrote the opinion and to the language in that case that uh and I would like to read it to the Court if I might.

By Judge Cameron:

I didn't say it but I would like to hear it.

By Mr. Doar:

The Court said absent such specific conferring of jurisdiction a Federal Court would not, indeed could not assume jurisdiction over a sovereign state without a precedent determination that though the jurisdiction had not been expressly conferred the language of the invoked statute carried [fol. 2257] the necessary the unavoidable implication that Congress upon the gravest consideration and after the utmost thought and deliberation had intended and did confer it. Now first with respect to that paragraph its our theory that Congress under the——

By Judge Cameron:

In other words you think we were saying there that although we didn't have to say you think we were saying that we would not infer the power to sue the Federal Government until Congress in explicit words has said so but if it had said so we would hold otherwise.

By Mr. Doar:

That's right.

By Judge Cox:

That doesn't answer the question for me at all. I have read it very carefully.

By Judge Brown:

Well, isn't the answer really that until the issue is posed and authoratively-ruled on it is open and it has not yet been ruled on.

By Mr. Doar:

That is correct.

By Judge Brown:

All Judge Hutchinson is saying there is that as I read it that if the statute by implication states that Congress felt [fol. 2258] in its judgment that action against the state was proper then the Court would find or could find the basis for allowing the suit but here there was no such implication that could be drawn from the words of Congress and there would always be I assume a question of whether when Congress declared expressly what its policy was they have done it here without a doubt whether they may constitutionally do so.

By Mr. Doar:

That's correct.

By Judge Cameron:

They did it to answer one explicit case, I guess you got the congressional history on that and I was watching it mighty close, they did it only to meet the Alabama situation as we all understood at the time and that's what the other side contends now and if its sheding close to unconstitutionality we would not assume that Congress is even going to get near the unconstitutional particularly when as here you are trying to fasten on the State of Mississippi a bad motive down in its own breast as a body politic when you have got a half a dozen or a dozen or two dozen individuals who have abused the discretion placed in them. Isn't that all you want to prove by these people whose depositions you are taking that in Amite County that one negro had registered, therefore, the Clerk is bound to have in representing the State of Mississippi is bound to have discriminated?

[fol. 2259] By Mr. Doar:

No, what we wanted to prove by the depositions referred to, Your Honor, was that the statutes were being used and constitutional provisions were being used and how they were being used not with respect to whether a particular negro was discriminated against but just exactly the technique which was used by the Registrar in Amite County for administering the statutes.

By Judge Brown:

Now these are illustrative you think you will undertake to show will you that this is illustrative of the pattern or the practices followed generally throughout the state.

By Mr. Doar:

Well, if we took a number of them we would show the practices.

By Judge Brown:

Or the Court could infer it if you had six or seven:

By Mr. Doar:

We would show the practices that have been followed through the State in how the statute was administered.

By Judge Cameron:

And you think that would fasten on the State forever the odium of having mistreated a part of its citizens by refusing them voting rights and when you have got 1 or 50 or 81 in various times you would say that you have given that dog [fol. 2260] an awful bad name and you just get rid of him and that's what it amounts to. In other words I haven't yet seen what you are proving and how its relevant to this case when you prove that in individual cases negroes have been discriminated against. They would be discriminated against if you just have an age qualification there would be some registrars say you say our are 21 but I know you are not so you couldn't have any possible limitations that wouldn't be misused by some people and I know some Court

and our Court probably has fallen for it but I am not going to fall for it. I just think that's carrying the crusade too far and too fast and I think the public opinion of America today is showing that too and what I want to know is the only reason you have got these individuals in is to show that they have discriminated, more particularly registrars so that you can fasten on the State the blame for having a bad statute or a bad constitutional provision. Is that right?

By Mr. Doar:

I think, Your Honor, we could have just sued one registrar. Our theory is we could have sued one registrar, United States versus Lamb, the Registrar of Leflore County. We could have challenged in that suit the constitutionality of all of these state statutes.

By Judge Cameron:

There you are a little over my head. We say for days on this with lawyers not as good as you are but have been [fol. 2261] trained their whole lives to do nothing else and they didn't take any such position as that. They conceded that the question of administration of a statute or a constitutional provision is different from the essence of the statute and whether its legal or not but all I want——

By Mr. Doar:

(Interrupting) Your Honor, I cite for authority for that proposition the case of Davis versus Snell. Davis versus Snell was a suit by an individual negro against one registrar, one board of registrars in Mobile County and in that case the Court declared the statutes unconstitutional.

By Judge Cameron:

That's a fact. The Supreme Court came along in one page and said that's so if Davis versus Snell is going to run this whole country then the country hasn't got the constitution it used to have. Judge—workmen hammering and Court Reporter unable to understand—who wrote that is dead and we ought not to say anything about him but that case simply is out of step with what the Supreme Court has held many

times before and since because they decided that paper on newspaper advertisement that people were saying if you pass this we will keep all the negroes from voting so Judge Mullins just went wild with that case in my opinion and said that the whole statute is wrong. Now all I want to know is is that your position?

[fol. 2262] By Mr. Doar:

Well, I don't propose I didn't intend to address myself to the correctness or incorrectness of the decision in that case. I was addressing myself, Your Honor, to the fact that in that case the issues with respect to the constitutionality of the statutes were raised in a suit against one registrar.

By Judge Brown:

Well, now the fact that you could bring this suit against one person does that militate against your bringing it against six or against the State of Mississippi if you think for one reason or other and the statute permits it that this is——

By Mr. Doar:

(Interrupting) I don't believe it was.

By Judge Brown:

(Continuing) desirable?

By Mr. Doar:

That was our theory that it was desirable first to bring the suit against the State because this case involves state law.

By Judge Brown:

Well, now if I get, I think we have kind of ranged a little bit now for these nice three little questions. I don't know whether we can ever keep it in any kind of order to accom-[fol. 2263] plish but as I get the theory of the Government it is that you could attack the statutes on their face against any one live body that has an official duty to carry them out

so that it is not a moot or an academic question but in these constitutional questions there is always the Shuttlesworth case and school segregation, Lane against Wilson, Yitwo against Hopkins, all of them, a question of valid apparently valid law that's being customarily administered in an unconstitutional way and you are trying to do both of those things in this case against all of the people whom Congress says you can sue: Is that it?

By Mr. Doar:

Our case is not a case against the illegal or arbitrary administration of a valid law. Our proof is confined to the question of the constitutionality of the statute. Our theory is that the statutes are unconstitutional. A question of what proof we could offer and what is relevant and what is not relevant would depend on how the Court what the Court how the Court decided at the trial but I know of no theory to prevent us from attempting to show how the statutes were used first of all to show that they were in fact used and to give to the Court under one of our theories a concrete concrete illustrations of the unlimited discretion that this statute vests in the registrar and that's why.

[fol. 2264] By Judge Cameron:

You are going back to 1890 and got a whole volume in there about what's happened since 1890 and you ought to in fairness put in Mr. Bowers book THE TRAGIC ERA and Bancroft's history of how the slaves got into this country and who brought them here.

By Mr. Doar:

Judge Cameron, that that we consider that evidence relevant but I would respectfully call the attention that these volumes that you refer to were submitted to the defense in response to their interrogatories and we were instructed by the Court to make as full and complete answers to the interrogatories as possible.

By Judge Brown:

Have you answered all of them?

By Mr. Doar:

We have answered all the interrogatories, yes, and we have supplemented some of our answers just today.

By Judge Brown:

And you never sought any relief from any of the questions or have you sought any relief of any kind?

By Mr. Doar:

No, we haven't.

By Judge Brown:

Except continuance and extensions.

[fol. 2265] By Judge Cox:

As I understand you, Mr. Doar, you are not contending then that you are relying in any part upon any improper administration of any of these laws by any of these registrars because they did it exactly like the law provided you would still say the act was unconstitutional.

By Mr. Doar:

That's right.

By Judge Cox:

So then its not anything that they do or don't do that you are complaining of in reality here that makes the law unconstitutional.

By Mr. Doar:

Just what they do and how they do it.

By Judge Cox:

You are saying that what they do is exactly what the law tells them to do.

By Mr. Doar:

What the law permits them to do.

By Judge Brown:

Your theory is apparently that judges in deciding the constitutionality of these statutes ought not to draw upon their imagination or so called personal experience based on reading or any other source of knowledge but on actual facts as have been operated and practiced in Mississippi since [fol. 2266] 1890 or any other date of an ancient vintage.

By Mr. Doar:

That's our theory. Now we selected the six registrars because we wanted this was frankly we felt that we had the right to sue one registrar or two registrars or any number of registrars we wanted.

By Judge Cox:

You didn't think they were necessary parties.

By Mr. Doar:

We didn't think they were necessary parties, no, Your Honor, we did not. We also recognized that there would be a number of objections to the suit against the State and conceivably a Court could find as Judge Cameron indicates that he is influenced to the effect that the section the 1960 amendment to section c.

By Judge Cox:

Mr. Doar, one of the things that's not easy to reconcile is that you ask specific relief against some of these specific registrars for separate and independent acts that each had nothing to do with the other and——

By Mr. Doar:

(Interrupting) Could I explain that to the Court?

By Judge Cox:

I don't want to distract you.

[fol. 2267] By Mr. Doar:

I appreciate that, I appreciate that comment and as I understand a Three-Judge Court case involving the constitutionality of the statutes once its convened its then obligated to decide all of the issues that are properly presented to it. Now our theory is that in one or more of the counties where there were defendant registrars that in offering our proof illustrative proof of how the statute would be used that it would be impossible for the Court to reach any other conclusion but that the registrar was discriminating and if the court reached that conclusion then it could enter an injunction against the registrar not to discriminate.

By Judge Brown:

That would give rise then to 1971 voter registrar referee situations it could.

By Mr. Doar:

It could but it not necessarily would but our theory was based on those cases that say where a Three-Judge Court is convened they should decide all the issues, not just the constitutional issues.

By Judge Cameron:

You have answered the question I have asked you. I wanted to get your contentions but I want to get this further one. Do you now contend that leaving out the State of Mississippi you could sue County A Registrar, County B [fol. 2268] and County C and County D all in one suit?

By Mr. Doar:

Yes.

By Judge Cameron:

I thought you had to state a joint claim against each of them, registration is by county.

By Mr. Doar:

But the claim is they are using the state statutes, they are using the unconstitutional state statutes.

By Judge Cox:

But they are not in anywise related to each other and there is no concerted action, they just simply used the same statute.

By Mr. Doar:

That's right.

By Judge Cox:

And different individuals and different counties under different circumstances at different times do different things or don't do different things yet you tie them together.

By Mr. Doar:

Because we are challenging, we are asking the Court to determine the constitutionality of the statute, not what they do, but that the statutes are unconstitutional no matter what they do.

[fol. 2269] By Judge Cox:

That's the reason it looks like its a little bit cloudy to even have them here if you are making that contention. You say it doesn't but you do something else.

By Mr. Doar:

Well, I don't understand what the Court, what do I do?

By Judge Cox:

By making them parties and suing them here as if it were a one judge matter you have got six one judge cases joined into a case where you say that the only thing you are trying to do is attack the constitutionality.

By Mr. Doar:

Well, the Court says I am litigating against them as if it was a one judge matter. The only thing we have done to litigate against them as if it were a one judge matter is to answer the interrogatories that were asked us. We haven't offered any proof, we haven't taken any of the Court's time, we haven't done anything.

By Judge Cox:

You are omitting the simple thing that you sued them.

By Mr. Doar:

Certainly I sued them because we felt that we had the right to sue them and join them when we were challenging the constitutionality of the state statutes.

[fol. 2270] By Judge Brown:

Well, aren't there two questions. Number one is joinder and number two is whether a three-judge court is required in attacking the constitutionality of these statutes. I assume the State of Mississippi would not challenge that. Certainly they are not so unconstitutional on their face that it's a matter so frivolous that a single judge could decide it and that must be the theory of it.

By Mr. Doar:

That's right.

By Judge Brown:

Then when you get a question of joinder we treat this as the equivalent of one or more three-judge cases against one or more individual registrars as a live defendant and try it either separately or as a consolidated case for the convenience of the counsel and the court.

By Judge Cameron:

Is there any precedent of the Supreme Court of the United States for joining individual, separate and unrelated parties like this and in order to prove by them that the statute on its face is unconstitutional?

By Mr. Doar:

No.

By Judge Cameron:

Is there any Court of Appeals decision that holds that?

[fol. 2271] By Mr. Doar:

No, not that I know of.

By Judge Cameron:

You are blazing a new trail on this?

By Judge Brown:

Well, the Federal Rules they seem to handle it.

By Mr. Doar:

But the Federal Rules, I think the Federal Rules authorize it. I don't regard it as blazing a new trail in a suit the constitutionality of state law to join six registrars in the state as defendants and give them an opportunity to show that the state statute is constitutional or defending it.

By Judge Cameron:

Of course what you want their evidence for use against the State of Mississippi and its statute, I guess you could go on and take depositions of the other 76 without suing them couldn't you?

By Mr. Doar:

That's right.

By Judge Brown:

Well, let me ask you this we get down to that point. Now these notices that you gave included both defendant registrars and non-party registrars did it not?

By Mr. Doar:

Not the notices, Your Honor, because we had prior to [fol. 2272] that we had approached defense counsel with respect to party registrars and we had reached a tentative agreement on that subject to this motion that we argued and when the motion was argued that went out but the fact is that if we hadn't had the agreement we would have had notices as to party registrars as well.

By Judge Brown:

Well, then specifically the notices that were suspended when Judge Cameron came on the Court with us are non-party registrars.

By Mr. Doar:

That's right.

By Judge Brown:

So then you do not have to have them in as a party to get the evidence that you think is relevant and we have to decide on whether its admissible at all.

By Mr. Doar:

No, we don't think we have to have them to take their depositions.

By Judge Cameron:

Now you have answered question one and two. I understand you now. Do you care to go any further on three; that is the right to sue the State. Does the Georgia case that Judge Davis decided and left the bench when he got bumped on the Raines case does that hold that you can sue a state [fol. 2273] in an action like this?

By Mr. Doar:

I don't believe it does.

By Judge Cameron:

And Alabama doesn't hold it because Alabama withholds it says the statute says you can sue the state and that's the only thing you all are fussing about so go on and sue the state and come back up here and we will tell you whether you have a constitutional right to sue the state. I am familiar with that one.

By Mr. Doar:

Well, I recognize that's one way to read that decision of the Supreme Court but I think the decision of the Supreme Court could also be read as saying now that the now that the uh statute authorizes suit against the state there is no need to discuss these other things and the case is going back and the state can raise the other constitutional issues if it wants but I don't think they were talking about raising the constitutional issue of the United States suing the state or about or the statutory issue of whether or not the statute said that the United States could sue a state.

By Judge Cameron:

Well, is there any congressional history of that statute which militates for your or against you that you know of, statute that gives the right specific right to join the state [fol. 2274] as a defendant?

By Mr. Doar:

As to what purpose of the statute.

By Judge Cameron:

I haven't seen any congressional history and I was mystified because most Government briefs are filled up with congressional history and we got one from Mr. Owen this morning that I didn't get a chance to look at. Do you quote any?

By Mr. Doar:

No, we did not.

By Judge Cameron:

Did you fail to quote it because it was against you or you just didn't find any either way?

By Mr. Doar:

Well, Your Honor, I just can't answer that question because I don't know the answer off hand. Before the argument is through I will get that answer for you if that's satisfactory.

By Judge Cameron:

As I understand you then that you say there may have been the right to sue the state all the time but when Congress came along and specifically gave that right that's all you needed.

By Mr. Doar:

That's right.

By Judge Cameron:

You have got the statute by Congress which is [fol. 2275] presumed to be constitutional.

By Mr. Doar:

That's right, that's our argument.

By Judge Cameron:

Well, do your opponents attack the constitutionality of that statute so construed in this case?

By Mr. Doar:

Yes, they do.

By Judge Cameron:

So that's one question we will have to decide.

By Mr. Doar:

If the Court construes the uh the decision of the Supreme Court in U.S. versus Alabama as not having decided that constitutional issue.

By Judge Cameron:

I don't see how when they say we specifically withhold any decision as to leave it wide open any defense the state may make as to the constitutionality of the statute.

By Mr. Doar:

They don't quite say that, Judge Cameron, but I recognize that the opinion could be read to mean that and be interpreted that way.

By Judge Brown:

It seems to as a part of judicial statesmanship that that's open to a court to say here's a statute, it gives [fol. 2276] jurisdiction, we reverse the case so that it can become a party defend all the way through with an attack on the statute. Now they didn't make that attack did they? What's the significance of the second United States against Alabama?

By Mr. Doar:

Well, the state was a party and injunction granted against the state and went to the Supreme Court and was affirmed the decision and this attack was now made.

By Judge Cameron:

But then it was made that is we specifically side-stepped it in the latest case you have had.

By Mr. Doar:

That's right.

By Judge Brown:

Now on the second U. S. against Alabama was not the injunction against the state? The injunction was against the state wasn't it?

By Mr. Doar:

Yes, it was.

By Judge Brown:

Was not the order which we affirmed one that granted the voting registration status to 65 or so named voters?

By Mr. Doar:

That's right.

[fol. 2277] By Judge Brown:

And the Supreme Court of the United States necessarily approved that in affirming it.

By Mr. Doar:

That's right.

By Judge Brown:

In the petition for cert in that case was any challenge made about the constitutionality of c, 1971 c do you recall?

By Mr. Doar:

No.

By Judge Cameron:

No petition for certiorari was asked was filed in that case.

By Mr. Doar:

There was a petition asked, Your Honor, and the interesting thing about that is that the Supreme Court granted the petition and affirmed.

By Judge Brown:

The same day.

By Judge Cameron:

That's right, three lines. I guess that's right.

By Judge Brown:

Well, that's more than I can get. I just get reversed here recently.

[fol. 2278] By Judge Cameron:

Suppose the State of Missssippi take up these same points. We have all gone all around the mulberry tree but I have raised myself the questions that I asked this gentleman over here even though they were taken with the case before and I did it because it looked like if we could decide it on its face one way or the other, I guess the State thinks we decided it wrong in the Darby case a good many of the same questions were involved and now if we follow the Darby case we would stop all the taking of these depositions and hold it to be irrelevant and personally I just got into it and I saw that record and I thought it it got any bigger we just wouldn't ever look at it and I wanted to stop it if the law required us to stop it and I want you to state, we have taken Brother Doar over forty-five minutes, but you have seen the questions asked and how my mind is running at least. Take about fifteen or twenty minutes to reply to that.

By Judge Cox:

As I understand Mr. Doar that the State of Mississippi is so vital and indispensable and its really the only one he is shooting at if it was held that the State of Mississippi couldn't be sued he would be out the window.

By Mr. Doar:

No, Your Honor, I don't concede that at all. I think the case would go against six registrars and if the Court [fol. 2279] would say you can't go against the six registrars, you can only go ahead against one registrar its these issues are——

By Judge Brown:

And its a Three-Judge Court at that stage.

By Mr. Doar:

Its a Three-Judge case and its got to be decided.

By Judge Cox:

Even if that happened to it.

By Mr. Doar:

Even if that happened to it.

By Judge Cox:

I though that might be a way for me to get out of a lot of work just to make all 82 of them parties that are not already under injunction and get rid of it.

By Mr. Doar:

Well, that might be a way to do it. I think it wouldn't unduly complicate the case, I don't think its necessary, I don't think we are obligated to do it.

By Judge Cameron:

All right, proceed, Mr. Clark.

By Mr. Clark:

May it please the, I don't think that I can give you any more than a surface treatment of our principal contentions and I understand the Court to want only that now because the feature of this argument that these statutes are con- [fol. 2280] stitutional on their face and the argument that

nothing that an individual registrar might do in enforcing a statute which is in and of itself a valid statute and not, Judge Brown, as the statutes were in Yickwo and similar cases. Take Gomillion for instance, you dissented in Gomillion. You dissented from that case because you said that no matter how you put this 28 sided figure down the only result and I emphasize the word only the only result was a racially discriminatory result but that is not the case with the Mississippi Statutes, but I would only emphasize to Your Honors that I am not prepared to go into the details of that because other counsel here have done so but I am in the position to give you the contentions of the State contrary to Mr. Doar if that's satisfactory. Is that what Your Honors want at this point?

By Judge Cameron:

Yes, I have looked over all the briefs, Mr. Shands' brief and lot of that is the same stuff we rehashed or we hashed at least in the Darby case and I thought perhaps the Supreme Court had spoken a little clearer since then on things I think they said in the Lassiter case and of course I think that's in favor of the State of Mississippi.

By Mr. Clark:

Judge, I might say that we had prepared a memorandum and I want to apologize for it and tell the Court that we will get a better reproduction, this is a carbon copy and they [fol. 2281] are the first but we can get a mechanical reproduction that will be more readable but this is our outline of what we thought the Court would be most interested in or what would be more helpful to the Court in presentation of this matter this morning and our initial point is just what you have said, Judge Cameron, the jurisdictional question lies at the threshold and it ought to be decided first because its an imposition on the Fifth Circuit, its an imposition on the District Court——

By Judge Brown:

Well, I think, Mr. Clark, in fairness to everybody that when we took it along we followed the suggestion of counsel the last time, I think Mr. Wells got up in Court and said

they were going to argue that matter. During the day the thing changed somewhat and a statement was read on to the record that you did want a right to argue it further and all we did was say at the moment we are going to take it with the case and get along with the discovery matters and up to the time these depositions were suspended that's what everybody followed so I don't believe that the Court had ever ruled expressly on this contention at all.

By Mr. Clark:

That's right, I understand that to be true, Judge Brown.

By Judge Cox:

I think Mr. Wells was sort of trying to act as the [fol. 2282] moderator for these other attorneys and I think he got a little static.

By Judge Brown:

Well, no criticism intended of Mr. Wells. I just wanted everyone to understand that we had not really I don't think we had ever ruled on it.

By Judge Cox:

No, we didn't rule on it.

By Mr. Clark:

That's my, I agree with you fully, Judge Brown.

By Judge Brown:

I have this one practical reaction, I am talking to a practical lawyer now because you are an old friend of ours, we see you quite frequently. You are going to be in this case whether the State of Mississippi is in it or not, you are a friend of all these defendants, the Attorney General is their counsel, we are almost at the end as I see it of the discovery process, the defendants have asked for a lot of information, the government has furnished it to them, now they wanted to take depositions. Why isn't it a practical thing since the State of Mississippi through its Attorney General is going

to be present at any activity that goes on in this case for the balance of the discovery to go forward, get it all in at a time when the State is bound by it if they are properly a party and when the case is submitted then the Court rules [fol. 2283] finally on whether the State ought to be a party. Now one other thing along that line and I am merely saying this so you can kind of address your remarks either now or the rest of your associates during the day if I understand the thesis of Mr. Shands' brief and its a very intriguing one it is that while these are acts of the State so as to constitute state action under the civil rights statute and the Fourteenth Amendment they are not acts of the State in so far as the State itself is responsible, only those agents, sort of spurious agents undertaking to do them are amenable. It seems to me that in that dialectic and that's what it really is that this turns really on the quality of the action which are alleged to constitute either state action or acts of the state. I am sure this doesn't make much sense to anybody who isn't or even to us and it turns on the quality of those acts and you cannot really determine quality from mere allegations and we have gone this far, why don't we get the information and the Court then passes upon it in terms of what the evidence shows, not what the lawyers say the evidence would show. Now those are the things in my mind and I would like for all of you to comment on them whenever its appropriate.

By Judge Cameron:

Let me sort of answer that by asking a question. My own feeling from looking through what the government has put down was this: Well, if they are going into all that they have got to go into the history of the negro, how he got to this [fol. 2284] country; whether he has made his way in this country or not; whether he would take an education or not; whether he wanted to go to school or not. I have got a friend here who came down from Missouri, an old gentleman now who is retired who has written quite a thesis on that for years in the school business he found that the negroes couldn't be made to go to school. Then it would bring up the economic situation of the State of Mississippi. I guess Mr. Doar don't remember that we ever had a war down here; his state has never been defeated but the State of Mississippi was dragged in the dust by just as bad treatment as the nazis

ever gave anybody atall by well meaning people from the north. Are you going to educate anybody? We didn't for a long long time and when we started educating them we started educating white children first because they are the only ones that wanted an education and then you come along through the years I think 85% of every nickle that's been put up for the negroes education has been put up by the white people. The white man has had the negro's burden all the time and of course we have got now the folks in Washington and from Wisconsin and Massachusetts and New Jersey who knew all about it coming down and telling us how to run this thing. Now if the Government is going to put in all of its side I hope the State of Mississippi will find some way to get in the tragic era and all the facts of it and the economic condition of Mississippi and I grew up [fol. 2285] in it, played with little negroes, born in 1890 and they couldn't let the negroes and the white folks schools turn out at the same time because they would get in a fight every day; yet I saw it come up to the time where any white woman could walk on any street in the State of Mississippi without being molested. In other words I want the whole picture, I don't want the Supreme Court to get a one-sided picture of the thing, that's what Mr. Doar is putting up that in 1890 you had so many negroes registered, 1895 you had less, why. I can tell you some reasons why and so can the State of Mississippi so if we are going to allow these depositions to be taken we will be taking depositions I think two or three years from now in this case so I think we ought to deeide just whether we are going to try the economic and social life of the white man and the negro in Mississippi we are going to try that from 1890 on let's try all facets of it and since I think that's an impossible task I would like I would rather get slapped down by the Supreme Court now on the face of the statute than to go up with a half built up record. Now that's the reason I was I suspect I started this thing in stopping the depositions but looks to me like an endless task and if uh advancing through what the Government has put in here stuff put in by folks who don't know a thing in the world about it and it can be answered most of it can and I guess the State of Mississippi has got money enough to make the answer but this thing will [fol. 2286] stretch out to ad infinitum it seems to me, but

going back to the question of Mr. Clark my feeling is that in asking questions about the three we have settled in our own minds about, at least we have gotten a good way towards settling them so I would like for you to take whatever you think is proper and the fact is that I think we ought to conclude this argument by 12:30 or 1:00 and I think necessarily we impinge on all the question which we asked you about so you just go ahead and talk.

By Mr. Clark:

Let me just make a very brief introduction if I may, Your Honor, to the argument the principal argument that will be made by my associate counsel and let me reply to Judge Brown's question by saying sir that I too want to be practical and for this reason it is the combined judgment of all of these imminent attorneys here in which I concur that the most practical thing for the Court to do is to reach the jurisdictional issue first because this will control in our opinion everything in the lawsuit. Mr. Doar says and it was not my conception of the complaint before and I am very glad he has clarified it, he says he is only making attack on the constitutionality of the statute. I join Judge Cox in wondering why the fifth paragraph of the prayer is in there to find against each individual registrar a pattern or practice of racial discrimination by that registrar. I think this a lawsuit [fol. 2287] against each registrar and I think that combined with it is a lawsuit against the State of Mississippi challenging the statutes and I believe it does have improper parties and I think if you took the other side of the thing then you would find that there were 76 necessary parties that had not been joined but I certainly don't recommend that course to the Court. I think the lawsuit if its an attack on the constitutionality of the statutes that the first question for this Court to decide is are these facially constitutional statutes because then you reach the end of the road in a more practical manner. If you say they are Yickwo statutes, if you say they are so vague and so loose that they vest naked arbitrary power in these registrars and they are using them as the supervisor did in San Francisco to deprive people of their rights then you have got an area in which all of this evidence could come in and I do beg to differ with Your Honor in the sense that I don't think that we are at the end

of the road of discovery. I think that the Government might be near the end of the road of discovery but the State of Mississippi has a right under the Federal Rules of Civil Procedure to have the discovery processes commenced by the Government completed before they determine what discovery they are going to ask for.

By Judge Brown:

Well, I don't understand the rule to work that way but I wouldn't I would think that would present no obstance. You are telling us now uh——

[fol. 2288] By Mr. Clark:

That some additional discovery will be by the State.

By Judge Brown:

I sort of had the feeling in that that was the coneensus that day that to the extent that it could practically go forward that you go forward simultaneously and that there was no need for one to complete this and then wait on the other.

By Mr. Clark:

Well, of course, Judge, what I am saying to you sir is we did go ahead within a very short time after that hearing I came into this case so I am able to say first hand there that we pursued it as diligently as we could and propounded these interrogatories to the Government and you can look at the stack of material they furnished us and know that they have been full if not complete and I have no reason now to know that the answers are not complete answers. I know that there is a wealth of material that they have furnished us that is supposedly responsive material to the questions that we have asked about why are you saying that these things are wrong, what are you alleging, what is the basis of your charges and secondly on the question of the State versus State action I don't think so that the quality of the act has anything to do with it. This is Mr. Shands' argument and he will amplify on that. I don't believe that; you could get any worthwhile fact that would assist you in coming

to a legal conclusion no matter how carefully you [fol. 2289] studied the alleged actions that are supposed to be the actions of the State.

By Judge Brown:

I find myself going around when you start talking about its state action but not action against the state.

By Mr. Clark:

Yes sir.

By Judge Brown:

But I understand that plenty of words have been said and give a little substance to each.

By Mr. Clark:

These eleven amendment cases have created a breach in my mind. I think that the Court followed the need power route which I think is a bad way to make judicial decisions. In other words when the eleventh amendment was passed that eleventh amendment got to be a barrier because they said the fourteenth prevents nothing but state action so then they had to climb over the eleventh and they did it by separating these agents from the state and there is just a long line of well documented decisions by every court in this land that there is a distinction and a difference between an agent who acts for a state and the state itself and they are created to get over the eleventh amendment. Mr. Doar's brief handed us last night says well this is not the proposition we have, we don't have to climb the eleventh amendment [fol. 2290] because this is the United States suing so therefore let's just put aside all of these cases that were decided on the necessity of getting around the eleventh amendment but that's no answer to it. I think that the point is that we would make to Your Honors now that a decision on the jurisdictional question there would also eliminate any need for inquiry into the details of what the acts were. We believe its a pure proposition of law and not one of facts so we think practically you can go ahead better by deciding the jurisdictional issue now.

By Judge Brown:

It helps me greatly and it may my Brothers here if we distinguish carefully as we argue this matter between the various kinds of lawsuits that are presented in this one big package. You have the United States of America as the sole plaintiff against two main groups; one is the State of Mississippi, the other are six registrars. Now I am going to back up a little bit and say to the extent that there is a good suit raising a serious question about the constitutionality of a Mississippi voting statute or its Constitution that is brought between the United States and a registrar within this district it seems to me that that poses one kind of a lawsuit that doesn't involve this question of the amenability of the State of Mississippi at all to be sued. It would involve the question of whether the United States has the authority to bring that suit and whether Congress under the statute can [fol. 2291] give it the right to bring that suit but if as to that particular segment of the case your argument is essentially a motion to dismiss on the ground that the statutes are constitutional on their face.

By Judge Cox:

And you further take the position that he couldn't possibly find or introduce any evidence that could possibly show that the statute is unconstitutional regardless of what he discovers.

By Mr. Clark:

That's correct sir, absolutely, exactly sir.

By Judge Brown:

Well, then that prevents two questions. First, the question of law whether the statutes are constitutional on their face and to that extent its sort of like the Darby case I suppose or the Williams case and number two is whether from a procedural standpoint the Court with uncertainties ought to permit discovery to go on even though it is likely or possible that at the end of the rope the court will have to rule either (a) that the statutes are constitutional on their face or (b) the evidence was of no material aid in arriving at that decision.

By Mr. Clark:

Yes sir, and my point from the standpoint of practicality if you take that route, if you take this second route [fol. 2292] which I say is the wrong route, in other words the emphasis I make to you now is the preferred route from the standpoint of your time and from the Fifth Circuit's judicial proceedings and from this Court's proceedings that if you take that route you are imposing a tremendous burden upon this Court and this is a specially constituted court. U. S. versus Phillips and I think all of the decisions indicate that this shouldn't be imposed upon the federal judiciary except in specific instances where the constitutionality of a statute is necessarily involved and we say that there is not a fact that you could find that would have any bearing at all on the legal decision of whether or not the statutory provisions and the constitutional provisions of the State of Mississippi attacked here are or are not square with the Constitution of the United States.

By Judge Brown:

Well, now let's take one simple little thing. The charge was made that under the most recent constitutional amendment of Mississippi and the implementing statutes good moral character is now a element is it, isn't that attacked?

By Mr. Clark:

I am sorry, the constitutional amendment and the statutes implementing the constitutional amendment of the State of Mississippi providing good moral character as a pre- [fol. 2293] requisite to voting in state elections is under attack.

By Judge Brown:

Wouldn't you have to concede as long as you represent the State of Mississippi that you could hardly regard the attack on that as so that you could hardly regard its constitutionality as so doubtful that it wouldn't take a three-judge court to pass upon that serious question. It takes a three-judge court there.

By Mr. Clark:

We are right now correctly in this lawsuit before a three-judge court in so far as somebody in this lawsuit is concerned. I have a great dilemma in my mind as to whether the defendant ought to be the State of Mississippi. I think that we have——

By Judge Brown:

Now you and I are together. We are together now. That's what I was trying to get at. In this court room there are two litigants.

By Mr. Clark:

Yes sir. In some way between the United States Government who is the only plaintiff and some one of these defendants we say that there is a three-judge issue.

By Judge Brown:

All right. Now we are together.

[fol. 2294] By Judge Cameron:

Mr. Clark, would you concede that if you get down to the point where we would say that we eliminate the State of Mississippi as a defendant because we don't have to decide for any reason at all Judge Brown has made the point and I think properly that here are and Mr. Doar too that here are six lawsuits in which the constitutionality of the actions under which these human beings the registrars act is under attack. Now I will ask you two questions about that. Could you bring in Lauderdale County and Clarke County in the same suit?

By Mr. Clark:

This is the Government's position sir but its certainly not ours. Now if I understand your question correctly I don't see how anything that has transpired in Lauderdale County or in Clarke County or in any one of the counties where the six defendants come from can effect a valid law and I don't think sir that Yickwo the ordinance in

Yickwo was valid on its face, I think the court completely and absolutely held it to be unconstitutional on its face and this Yickwo decision comes up time and time again and I think that the opinion in that court that the opinion of the Supreme Court in that case ought to be very carefully read because there is more to me that says that the statute itself on its face was unconstitutional than there is to the contrary. I know that they talked about the way that [fol. 2295] that the statute was administered and if you will read the case you will find that they could have come to the conclusion that there had been racial discrimination either because of application or because of the statute but I think this Court in reading Yickwo and in reading the numerous decisions since then about similar incidents ought to realize that those are two separate propositions. If you have a valid statute no registrar in the State of Mississippi can outguess the Legislature and repeal or add to some part of that statute and make it unconstitutional. It either is or it isn't and once its in this gray area of being arbitrary or once its in this gray area of having no possible result but a discriminatory result than I think the Court can have the gates opened to go past it and into facts but I don't want to take time from counsel here with me who have prepared in detail these arguments. I was interested in discussing with the Court but if I may——

By Judge Cameron:

I want to ask you one more thing now. Suppose we should say that every one of these that the State was not properly in the Court, we will not decide that question and we will decide only one county and let the Government pick its county then would what has happened since 1890 up to the present time in the State as a whole have probative value in deciding whether the statute was unconstitutional or not?

[fol. 2296] By Mr. Clark:

Do you mean to say, Your Honor, that you would let the lawsuit exist against one registrar, let's take Pike County because that would be one that you had both jurisdiction and venue of because if these others went out

certainly the Court would not maintain would not leave itself with one action against one registrar in the Northern District or against another division outside of the Jackson Division of the Southern District where this suit was brought, but let us say that the Court wound up with a single lawsuit. Do I understand Your Honor to mean that this would still be the Three-Judge issue, this would still mean that no decision on the constitutionality of the statutes on their face would have been made and that the Three-Judges would then be determining whether or not a single in a lawsuit against one single defendant the statutes were constitutional or not.

By Judge Cameron:

I understood the gist of Mr. Doar's argument was that if the constitutionality is raised properly in any suit any suit against any individual registrar then he would want to put in evidence the history of action generally under 244 I guess is the one primarily involved since 1890 as showing that its statute is so I mean the constitutional provision which lends itself so easly to discrimination under it that looking at it on its face plus the historical use that's been [fol. 2297] made of it since the beginning of the white government in Mississippi in 1890 whether that would be relevant evidence in that case.

By Mr. Clark:

No sir, because it would be the contention of whatever defendant was left if the statutes were left in, in other words if you leave the basic issue that creates the need for a Three-Judge Court which is should an injunction issue to stop a man from enforcing a statute on the grounds of its constitutionality 1971 takes care of actions where they say you are using a constitutional statute but you are using it in a discriminatory way just as Your Honor said if you write a law that nobody under 21 years of age could register its susceptible of discriminatory administration and racially discriminatory administration of course which is the key to the whole thing because he could tell a person of once race, yes, I think you are 21, go ahead and register, and he could tell a man with gray hair and a beard and a

stooped back of another race no, I don't think you are 21, so something as simple as that could be misapplied but but that's not an attack on the constitutionality of requiring somebody to be 21 years of age because the Government themselves in rewriting our statutes as they have suggested to Your Honors here would permit us to continue the age requirement in the new voting requirements that they want to establish for the State of Mississippi because they don't [fol. 2298] say that that's arbitrary in itself, but Judge you never can get into facts if the statute is a valid statute on its face, there has got to be a defect that this Court can find on the face of the statute before facts are going to help you make a legal decision.

By Judge Brown:

Well, maybe the Court ought to have the facts as to the circumstances in which the statute applies we get out of this tender of race and civil rights suppose its a statute that undertakes to regulate the cotton business and we have had a number of those in Texas I know and the taxation interstate commerce rates against intrastate commerce transportation rates so is not the Court entitled to be informed factually as to the setting in which this law operates and when I say that I don't care what kind of a how far it goes, I will go with Judge Cameron if we can get Mr. Bowers here that's fine, I want to listen to everything but is there may there not be a proper place for a reviewing court to consider the statute in its actual operating setting not with the idea of getting a Shuttlesworth type of maladministration which is a different thing but merely so the Court knows by the evidence what how the statute works and why in view of how it works it has these defects.

By Mr. Clark:

No sir. Our position is absolutely the contrary, Your Honor. If the statute passes muster, now of course this [fol. 2299] is implicit in what I say obviously when you have a doubtful statute the Court then goes to legislative history but when the statute when you can take the statute just like you could a contract the same thing applies in contract law in the parole evidence rule when the contract has a mean-

ing that this Court can ascertain from the four corners of the instrument you are not going to hear a party come in and say well when I signed it what I really meant to say was that I was only going to pay him $450.00, I know the contract promises to pay him 500 but I was really thinking about 450 all the time and if you will look at the setting you will see that that's all that I owed him at the time.

By Judge Brown:

Judge Cameron and I we fight sometimes a lonely battle on the Fifth Circuit we are committed to the proposition that when you go to interpret a contract you are entitled to show the factual setting in which the two negotiators were negotiating to give life and meaning to the words they used, not to alter it and that's just what I am trying to say is there a place for that inconstitutional determination of statutes.

By Mr. Clark:

Well, Judge, every time that you get into that area its because you are doubt about what they meant.

[fol. 2300] By Judge Brown:

Oh no, no, that's where the people who don't excuse me for saying don't think clearly always laps back but I don't believe that's so.

By Mr. Clark:

Well, in the field of statutory construction the position of the State of Mississippi is flatly and positively that until you find a defect or an ambiguity or if until you find that the only method of application must of itself result in a discriminatory finding or a discriminatory practice can you go behind a statute and consider motive or intent any more than I can go behind the judicial decision and say well this Judge came from a section of the country which prevented him from understanding this problem or he came from Mississippi, therefore his thoughts were of a particular kind or maybe he isn't married and he doesn't appreciate problems of married people. These things are not permissible

with regard to a court decision and they are not permissible with regard to the decision of a legislative body of a state. Its only when you are in doubt about what they meant to write that you need to go into legislative history at all. Its just like this word deemed; is deemed conclusive or is deemed just prima facia or what did the words of Congress intend to accomplish when you know that they were enacted in the light of the decision where the registrar the decision [fol. 2301] of the Court that it was helpless where Registrars resigned. Was this the only problem that they were attempting to correct or does the language mean more. The reason for going behind at all is because when you read the words of the statute you are in doubt about what they mean.

By Judge Brown:

Now this again the reason we have so much trouble here this thing is just like a room full of feathers. We have got two problems. First, this basic one the remarks you have just made if I understand them correctly you would urge those if this were a suit between the United States of America and the Registrar of Hinds County, that's the local county is it?

By Mr. Clark:

Yes sir, Hinds.

By Judge Brown:

You would make that same argument here that none of this evidence is relevant.

By Mr. Clark:

That's correct sir.

By Judge Brown:

Aren't we though at this stage faced with a problem of whether it is sufficiently possible that it has some relevance that at a pre-trial stage we ought not to undertake to rule on because we can still rule on the trial that the information assembled by discovery is not admissible or if we take it we can exclude it, but then we do it in the light of

[fol. 2302] the final decision. You are asking us in effect here to make a determination that under no circumstance is this factual material which we don't really know what it is yet could have any bearing on it and that it seems to me is almost deciding the case.

By Mr. Clark:

I think Your Honor, now that Mr. Doar has made the announcement that he has I think it does decide the case but until I got to the Court Room this morning I was on the I was of the impression from the relief asked and the allegations made about registrars here, there and yon having done discriminatory things that he was bringing six pattern and practice suits and one constitutional law suit all wrapped up in a bundle together. Now he says this is not so, that these people are nominal parties in effect. He says he's he doesn't want to admit them out of court as I understand it but he says that the reason that they are in here is as a part of an attack on an unconstitutional statute and this this created a problem for me because I didn't know the answer but I would say regardless of who you make the issue up between that the first legal consideration of this Court is are the statutes constitutional on their face. Now if you find that there is some ambiguity in the statute then you have made a beginning legal determination. If you find there is no unconstitutionality on the face of the statute I [fol. 2303] say you have made the determination of the lawsuit, you have decided the lawsuit because you are not permitted to go behind but if you decide that they do have some ambiguity then you open up the next question which is the one that's in your mind being uncertain of what they mean I need help, I need additional light on what the legislature and what the congressional what the Constitutional Convention was trying to do, therefore, I will consider what happened in 1890 and what happened in 1891 and 2 and right on down to the present time. After you make this first opening determination of whether these statutes are in and of themselves valid then you could get into a fact issue because as I understand now Mr. Doar says there is no pattern or practice suits pending here, that he is only talking about the way administration has colored the laws.

By Judge Brown:

Of course I do think he would say maybe to your disappointment some months later that if we allow this evidence in and if it does show in fact a pattern or a practice then under the Avocado Lime Growers case or whatever they are this Court has a duty then to go ahead and decide that and I think the last time I said we didn't want to but we have to.

By Mr. Clark:

I think that's maybe the result of that particular case they said that you have got it and you go on and decide all the issues and unlike some what some of the dissenters on [fol. 2304] the Supreme Court said they said——

By Judge Brown:

But I think that the Court could keep it from happening by allowing the evidence in for a very limited purpose and then under a good deal of restriction.

By Mr. Clark:

You sure reach a peculiar result, Judge, because I guess by then you would have held if you hold that the statutes are unconstitutional then what's wrong is so far as the pattern or practice is concerned, its the statutes that cause the difficulty and you are leaving the man without a statute to administer. On the contrary if you hold after you listen to this evidence that the statutes are constitutional then you have got a pattern and practice suit solely and exclusively.

By Judge Brown:

Well, I want to make my own position very clear. I don't think that a Three-Judge Court ought to be a pattern or practice Court. I don't thing I ought to come over here, I ought not have to worry with that, I shouldn't say worry because that's my job, I get paid for it, but that's something left to the District Judges of Mississippi and I think it quite well taken care of and the Court itself could take the initiative to see that this doesn't lapse into a pattern or

practice case even though we allow evidence in for another purpose that would be relevant to it. I don't want to be a [fol. 2305] practice, I might have to appoint referees.

By Judge Cameron:

This Court said in a recent case words that have gone around the world that the Judge acted on what the Judge saw from the witness stand so that's the way this might come down to, we see Misssippi has just been treating the negroes awful bad all this time that we have got to find some way, I mean what we see is determined by how far we go and we have got that question. Anyhow let's stretch ourselves and got out in the hall and take you a smoke. We will recess for five minutes.

(Court recessed at 11:14 for 5 minutes.)

By Mr. Clark:

May it please the Court, Mr. Luckett of Clarksdale has prepared particularly for Your Honors this morning the question of the validity of the literacy test, Section 244, and I think that he has some comments that might be more helpful to the Court than my generalized comments and I would like to ask Mr. Luckett at this to——

By Judge Cameron:

Now let's see, about how long did you talk, about fifteen minutes?

By Mr. Clark:

Judge, I did not keep up with the time.

[fol. 2306] By Judge Cameron:

We did most of that for you and the same is true for Mr. Doar he talked 45 minutes or an hour with our very able assistance and we want to divide this and that's all. We are punching about at all these questions and just trying to get ourselves oriented to where we can have the big argument after you all leave and you just divide it up any way you want to. I will charge you with fifteen minutes, maybe twenty. We have an hour to an hour and a half left.

By Mr. Clark:

I might suggest that Mr. Luckett will take——

By Judge Cameron:

And we want to give Mr. Doar some reply.

By Mr. Clark:

Yes sir. If Mr. Luckett would take ten minutes.

By Judge Cox:

The same as Mr. Doar's argument wouldn't you.

By Judge Cameron:

Well, we got all we wanted to know from Mr. Doar and that's all we want to do with anybody and we don't care about argument or you taking your cases up because the minute you cite a case to me I get down the book, I may read that later, but we can study your briefs after we have gotten from you what your real fundamental contentions are about the matter.

[fol. 2307] By Mr. Clark:

Yes sir. I thought maybe Mr. Luckett could help you some with regard to particular area of 244 of the Constitution on literacy.

By Mr. Luckett:

If the Court please, I won't take but a few minutes because I actually realize that there is no need to argue to this Court about the validity of the literacy test or about the fact that Article 2 of Section 1 of the Constitution of the United States confers upon each state the right to fix the qualifications of voters in that particular state. This Court is familiar with that proposition. Of course its gone through in detail in the Darby case and I don't suppose there is any question about the fact that the State of Mississippi is a state in the union and it does have those faculties that all other states have, the same power of self-government and the same right to fix the qualifications of sub-

jects in the State of Mississippi provided of course that it does not contravene the amendments to the Constitution of the United States. That is our fundamental proposition on that particular thing and of course we go back to the Williams case and to the Lassiter and all those cases which holds those particular rules to be good and valid in so far as these cases are concerned. I would want to go back to this proposition that you raised, Judge Brown, about the taking of depositions before we make a decision as [fol. 2308] to the constitutionality of the statute. Now we came her under perhaps under misapprehension we had thought that the Government contended that the individual registrars had misapplied or misused the authority given them under the statutes. Now as I understood Mr. Doar to say although he may not have meant it exactly that way but at the presen time they were not charging that any particular registrar had misused the power and authority granted to him by the statutes. We had thought they were in that way trying to get around the Williams case, but in that connection if the Court please he says he wants to take the deposition of some of the registrars of the State of Mississippi so that the Court can see how these particular statutes have been implemented or have been used by the registrars. Now I ask Your Honors to remember that there are 82 counties in the State of Mississippi, 10 of those counties have two judicial districts; in other words there are 92 different places in the State of Mississippi where people go to be registered and that necessitates at least 92 registrars in the State of Mississippi who act under these statutes that are now under attack in this case and to find out that those how those statutes have been used if the Court wants to find out about that we are going to have to go to everyone of those 92 court houses in the State of Mississippi and take the depositions of those particular registrars. We representing the defendants in this case [fol. 2309] certainly can't let Mr. Doar pick out ten of them because I am sure that he would do what I would do if I were on that side he would pick out the ones that he would think would make the State of Mississippi look bad and say here's an illustration of how these statutes are used in the State of Mississippi and so we say if you say we are going to pretermit the decision on this particular point until we

get all this testimony in there we will just have to say to the Court that we are going to have to go to 92 separate court houses and take the deposition of some of them, at least we will take the deposition of those we think show that these statutes have been followed and have been implemented as they should have been implemented and if that is done its going to take its going to be an a considerable burden on this Court. Now personally when they talk about individual defendants I represent the Registrar in Coahoma County. We live in Clarksdale about 200 miles away from here and so far as I am concerned I don't think my case has anything to do with Mr. Lott's case who represents the man down in Greenwood or any of these other gentlemen, some of them 200 and 300 miles away from where I live. I have never seen their clerk, never talked to them, don't even know the names and the only thing about it is that one happened to be a registrar of a Mississippi County and another a registrar of a Mississippi County and I can't——

[fol. 2310] By Judge Cameron:

You couldn't take those depositions except by consent I believe under the rules.

By Mr. Luckett:

Well, I can't see for the life of me if the Court please how what a registrar down in South Mississippi can how he can effect the attitude or the action taken by the Registrar in Coahoma County. I can't see how what Mr. Jones does in Pascagoula can effect Mr. Smith in Clarksdale and I don't see why that's pertinent in so far as Mr. Smith is concerned and its an incomparable burden and as I say this is an individual clerk and this thing he has got three lawyers sitting around this table and he can't afford to set up all over the State of Mississippi and shouldn't be called upon to do that unless its absolutely necessary and required by the rules of the Court and I heard Mr. Doar say if these were six separate suits that they could bundle them all up together by the federal rules but just what that rule is I don't know, I don't know what rule will say that they can sue the Clerk in Amite County and the Clerk in Coahoma

County in the same lawsuit and bring them down in Jackson, Mississippi. I just don't see any connection between the two suits.

By Judge Brown:

Isn't there a federal rule, I am asking now, generally when I ask a question I know the answer or think I know [fol. 2311] the answer. Isn't there a rule though that does allow the joinder of other of several defendants when common questions of fact or common questions of law are presented so long as the court's given the power to separate or provide for a severance of any particular issue if there is some need for it.

By Mr. Luckett:

Well, I suppose there is such a rule, I am sure Your Honor is more familiar with it than I am but I can't see that would be a combination of fact. I don't see how the facts in Coahoma County effects the facts down in Amite County. We might have in Coahoma County the man is apply the statutes exactly as they should be applied so far as the man down in Amite is concerned he has no connection with him and what he does down there and can't possibly effect the man in Coahoma County. I just can't see any connection between the lawsuit anything to bring the two together under the one tent and so we certainly say that if the State of Mississippi is out of here that we ought to be brought back into our own baliwick and let's try the lawsuit up there if they are going to try to prove just how we have proceeded under these statutes then they should do it in our particular court but in that sort of a case I don't see how the depositions of 81 other clerks would be testimony against Mr. J. W. Smith in Clarksdale, Mississippi, action for which he is not responsible in one way [fol. 2312] way whatsoever but at any rate the point I want to make here without going into this argument about the literacy test because that's been covered in all the cases and can't possibly be in dispute and we think so far as the statute itself is concerned its just as clear as anything can be, its constitutional on its face. After all in Williams it was held in the original 244 that it was constitutional when

it was read and interpret and now we have added the words and write but and write has been held to be constitutional in Truso and in Ginn and in——unable to understand counsel——so we have these cases which come within the corners of the United States Supreme Court decisions. Of course we do have the addition of good moral character and Mr. Lott will discuss that but thats in any number of constitutions of other states in the United States. We have the most absurd requirements in different uh different uh states. I was reading Senator George's speech made in 1896 and at that time the man in Connecticut he couldn't be an elector if he walked scandalously. Now what you mean by walking scandalously I don't know but the people in Connecticut knew about that and that happened as a prerogative as a state in the union to fix that particular qualification so uh we submit if the Court please that not only the statute the constitutional provisions are valid under the United States Supreme Court decision but when we take these implementing statutes about what a man has to [fol. 2313] do when he goes to register and uh his recourses against improper use of the statutes that they can be examined in detail and if given an opportunity to write a brief we can show in detail that in no respect can they be brought under the condemnation we say of Haley versus Shell. Every possible barrier against discrimination is placed in the statutes themselves and we make the additional point if the Court please we have got this constitutional statute, it is constitutional on its face and it comes within the powers granted to us by the United States that no individual registrar can of his own misuse of the statute destroy the constitutionality of that statute. Suppose we have got 70 of them or 72 of them who are doing exactly as they should do and 10 of them misbehaving of course I think that the 10 ought to be stopped and ought to be made to comply with the statute but I can't see or any case that will hold that a clerk can destroy a statute which is constitutionally within the power of the legislature to adopt and with those I will let Mr. Lott take on the good moral character.

By Mr. Clark:

Judge, if I might just interject one thing. Judge Brown asked a question about joinder of parties and I believe that that's Rule 20 that Your Honor has reference to and I think that there are two absolute qualifications it must be an action arising out of the same transaction or occurrence or the same series of transactions or occurrences [fol. 2314] and involve common questions of law or fact and the position that we take before Your Honors is that when Joe Smith comes into the Registrar of Coahoma County to register that's a transaction. Now if this man has a pattern running through all of his registrations whether Joe Smith or John Brown or any one who comes in then this is one problem but he's not controlled and there is no charge of conspiracy here whatsoever, he's not charged to have conspired with the registrar in Pike County to follow a set pattern or practice and unless there's some sort of an implied allegation of conspiracy to defraud, I don't think you can have that, I always understood its got to be clear and convincing.

By Judge Brown:

We have six registrars.

By Mr. Clark:

Are defendants, yes sir, are named defendants.

By Judge Brown:

How many of those are outside of this district?

By Mr. Clark:

Four.

By Judge Brown:

Four.

By Mr. Clark:

No, three outside of the district and four outside of the division and district. Wilkinson and Pike are in this [fol. 2314A] division and district, in other words this Court has both venue and jurisdiction (and I would like to ask Mr. Lott if he would talk about good moral character.

By Mr. Lott:

Please the Court, just briefly the Government is attacking the good moral character provision on the grounds that it vests unlimited discretion in the registrar and second that its vague and indefinite and suggests no standards. Now just briefly, Mississippi amended its constitution so as to provide that in order to become a qualified elector such persons shall be of good moral character and they passed statutes enabling statutes with reference to it and the Government is asking that the constitutional provision and the statutes be declared unconstitutional. Now on the question of vesting unlimited discretion in the registrar I think it should be sufficient just to state briefly what the Mississippi statutes provide about that. They provide in substance for a written application of which a record is made and they provide that if the registrar turns anybody down on account of lack of good moral character she shall endorse that on their application and make a finding stating the facts on which that finding is made. Going further Mississippi statute requires that when a person applies to register, fills in their application their name is published in the paper for two weeks under title applicants for registration once a week for two weeks. Within fourteen days following the [fol. 2315] last publication any qualified elector can challenge the applicant's requirements both as to moral standards and otherwise. Now they challenge them by filing an affidavit in duplicate setting forth the facts on which the challenge is based. The clerk then delivers one of those duplicate affidavits to the applicant who is challenged and the clerk sets a time and date for a hearing on the matter. The applicant who is challenged can be present either by himself, he can have attorneys, he can cross question witnesses and the statute provides that a competent stenographer or court reporter take down the proceedings so that

there is a complete written record of the findings with reference to the good moral character. The statutes then further provide that the applicant if he is rejected for lack of good moral character the Clerk makes a finding of facts as to what that's based on and the applicant can appeal. He can appeal very simple matter to the County Board of Election Commissioners who try the whole matter de novo, he can appear there, if he doesn't like their decision he can go on to our Circuit Court and then to the Supreme Court of Mississippi and of course from there the statute don't say so but the Supreme Court of the United States. Now there is a complete thing there that the witnesses testified under oath that the clerk hears the evidence, it has everything about due process in it. Now that to me answers without anything else their charge that it vests unlimited [fol. 2316] discretion in the clerk. Clearly it doesn't. Now briefly on their other contention that the term is so vague, indefinite and suggests no standards I would like to mention this to the Court. First of all the Supreme Court of the United States in its own rules that it wrote and all of the Circuit Courts of Appeals except one have similar provisions. Now I won't read all of them but the Supreme Court of the United States in its Rule 5 reads this way "It shall be requisite to the admission of attorneys or counsellors to practice in this Court that they shall have been such for three years past in the highest court in the state, territory, district, commonwealth or possession and that their private and professional character shall appear to be good. Now the Circuits Courts of Appeals I don't have time to list them but they either require good character or good moral character. Now to me I mention that to begin with because its inconceivable to me that the federal judiciary in writing their own rules regards the requirement of good moral character as being so definite that they use it without other standards and that they would then turn and say but when a state legislature does it its so indefinite as to be unconstitutional. Now not only do the Federal Courts do that but federal statutes. Now for instance one of the requirements of naturalization in the federal statute is that the person and still is a person of good moral character. That has not been challenged by anybody as far as I know of being so [fol. 2317] vague and indefinite as to be unconstitutional

and that language is used by Congress. Now the Civil Service Commission of the United States I have here one of their inquiries. Now they have got I don't know how many hundred thousands of employees when they sent out questionnaires when you apply to the Civil Service Commission of Mississippi uh of the United States for a job they send this questionnaire out with this question do you have knowledge of any behavior, activities or associations which tend to show this person as not reliable, trustworthy and of good conduct and character. They use the same thing. Now briefly that term good moral character or good character, of course good character requires more than say a good moral character because moral character is much less stringent requirement than good character but now that term is used in statutes all over the United States and has been for years and the courts have passed on it. Now for instance just briefly the District of Columbia and thirty-seven states require that architects be either of good character or good moral character before they can practice. Thirty-four states have that requirement with reference to attorneys in their statutes. The District of Columbia and thirty-seven states require it with reference to a barber. The District of Columbia and twenty-eight states require it with reference to a civil engineer or surveyor. The District of Columbia and thirty-eight states require it to practice medicine. Thirty-nine states require it of undertakers and [fol. 2318] funeral directors. The District of Columbia and thirty-seven states require it of pharmacists. Thirty-five states and I will skip that one. The District of Columbia and twenty-eight states require it of veterinarians. The District of Columbia and forty-one states require it of certified public accountants.

By Judge Brown:

You know what intrigues me. How did you get all this information? I don't question it but just how did you go about it?

By Mr. Lott:

Had to look up through Attorney General's office, had to look up all the statutes of those different states and we have the statutes number referring to them.

By Judge Cameron:

Have you ever figured out what our commsisions mean when they say we shall hold office during good behavior.

By Mr. Lott:

Its pretty hard.

By Judge Cameron:

I'm sort of dubious sometimes.

By Mr. Lott:

Now on the election thing there are four or five states have that with reference to elections.

By Judge Brown:

This kinds of pinpoints a very I think one of the [fol. 2319] serious questions of law in this case on this evidence. Don't you think that or do you think that the timing of this very, this is a recent amendment isn't it, 19 what 62?

By Mr. Lott:

62 I believe.

By Judge Brown:

Right. Now I have heard all this before see in one of these cases or I may be inaccurate when I am trying to give a resume of the history but as I recall and when we were hearing the Lynd case our court whether rightly or wrongly, I am talking now about the Fifth Circuit would hand down an opinion, the Legislature of Mississippi was in session at the time and they would pass a law, we would enter another order, they would pass another law. Now without imputing anybody's motives at all, is not the historical setting in which each one of these changes made have to be of some constitutional significance. In other words I have this sort of approach in Gomillion and all the Supreme Court did as I read Gomillion is they sent it back for a trial and I don't know what's happened to it since. They said its you have

got to look at it, that you couldn't see any basis, I could see nothing except racial discrimination that could have justified or could have brought about that legislation. Now here in the history of Mississippi they have gone along since 1890 with what they regard to be a pretty sound electorate apparently and all of a sudden then in 54 with some decisions [fol. 2320] that they considered to be wrong in race matters they start making changes and then court decisions come out and they make more changes. Now cannot a reviewing court give some consideration to those historic facts as bearing upon the constitutional interpretation and validity of those statutes.

By Mr. Lott:

No sir, I don't think so. It seems ot me that its a question of whether the state has the power to enact the statutes. If it has the power and there is nothing in the Constitution of the United States or its amendments that prohibits it then their motive or intent to me are entirely immaterial.

By Judge Cameron:

That's almost gone down the drain, Mr. Lott. We said that in Darby and we had a whole stock of opinions there but all the courts, I haven't seen the Supreme Court, but our Court constantly has said that that was just done to meet our decision of day before yesterday. You say you couldn't challenge it because of motive if there was power. I hope that we can revive it but its suspect now.

By Mr. Lott:

Well, Your Honor, if you go into intention or motive then there on the face of the statute is the plain reason for it; that is to do what other states have done in upgrading barbers, veterinarians, to upgrade the electorate to require [fol. 2321] them to be of good moral character. Now that is certainly an admirable—unable to understand counsel—there it is on the face of it, how could you go into any possible motive and say that that's bad. Can you say that the State of Mississippi which is a State of the Union that you have done things in the past which you should not have done, therefore, forevermore you can't enact a statute even

though it's valid and you have the power to do it and Maine could do it and it would be all right but you can't do it because you were bad back there last year and two years ago.

By Judge Cameron:

I will tell you this, Mr. Lott, we struggled through that in the Alabama case over here. Alabama let its Supreme Court fix some requirements and one of them was good moral character and we wrestled up and down with Mr. Doar's argument on there in the Atkins case and we came up with this sort of a statement that if you are going to ask a man questions determining his moral character you have got to have what answers are made in the hearing taken down and made of record so the courts can pass on the validity of them. I would think that's a holding that if you do that we will not knock it out, at least we are writing up our own blueprint, not me but.

By Mr. Lott:

That's exactly what Mississippi has in its statute, its taken down, there's a court reporter, you can go to the [fol. 2322] Election Commission.

By Judge Cameron:

You better move along, Mr. Lott, because we have got only about forty or forty-five minutes more.

By Mr. Lott:

Let me make one statement here. On the definition of it in words and phrases you will find page after page of court decisions on it.

By Judge Brown:

On good character, good moral character?

By Mr. Lott:

Yes sir. Now I will just read one of them from a federal court and say this that the federal courts have generally adopted this as the meaning of it. Good moral character

must be established as a pre-requisite to admission to citizenship and such character results from acts and conduct of an individual and is of such a character as measures up to standards of average citizens of the community in which the alien resides.

By Judge Cox:

That's the Fifth Circuit interpretation under naturalization cases.

By Mr. Lott:

There is a number of them, they generally have about the same wording, those words, there's forty or fifty of [fol. 2323] them or more. That has a well meaning, its nothing vague and indefinite about it, its used all over the United States and we have got every safeguard for due process, therefore, we say its unquestionable that statute is good on its face.

By Judge Brown:

Now what about just in a nutshell these judicial reviews can an indigent is there any provision made so that an indigent can have all of these protections or does he have to finance this litigation with the court reporters and lawyers up through the registrar, the county board and circuit court and so on?

By Mr. Clark:

In view of Griffin versus Illinois, Judge, I don't think we have got a choice about it. I think the Supreme Court of the United States has foreclosed that question. He has got a right to sue whatever legal remedies are available to him whether he is indigent or not and its the question of whether the state has got the duty to furnish him not only with the transcript but with a lawyer.

By Judge Brown:

With a lawyer too.

By Mr. Clark:

Your Honor made reference to Gomillion and may I just say it this way Gomillion was dismissed and the Supreme Court had to say this in its case had to remand it because [fol. 2324] they said now we have got to on a motion to dismiss take the allegations as admitted but they said here that because of the allegations the inescapable human effect of this of laying this plat down on this town was to despoil the rights of negro citizens. That's what they had to find before they could go behind it sir and that's the same thing I contend. Your Honor asked a question first this morning about the capacity of the United States to bring this suit solely under 1971 as I understand Mr. Doar's argument and Mr. Stockett has that point and I would like to ask him to speak just very briefly for five minutes, I understood Your Honors do we have as much as fifteen minutes more so that Mr. Stockett may take five and Mr. Shands take ten in closing.

By Judge Cameron:

You do. I want to try to save the other side about twenty or twenty-five minutes to pretty well equalize it.

By Mr. Clark:

Thank you sir. Mr. Stockett.

By Mr. Stockett:

If it please the Court, the question that I am going to address myself to briefly is the standing of the United States to bring that portion of this suit which challenges the constitutionality of our statutory and constitutional requirements for registration and the argument is going to be in only two parts. The first is that the only standing that the [fol. 2325] United States has in this case is to enjoin a violation of 42 USC Section 1971a. We contend that the United States does not have the broad power to come in and litigate general Fifteenth Amendment rights; that its only statutory standing comes through 1971c which talks about a violation of subsection a or b and thus its restricted. The second part of the argument is that words and I quote

who are otherwise qualified to vote unquote as used in 42 USC Section 1971a restrict courts under 42 USC Section 1971c to hearing actions brought to protect rights of persons otherwise qualified by law to vote and what that is getting to is this, Your Honor, this is a far different case from a case like Davis versus Schnell. An individual has got a right to come into federal court and attack a state statute for voting or registration on the grounds that his Fifteenth Amendment rights are being violated, his general Fifteenth Amendment rights in addition to whatever rights he has under 1971a, but the United States can only come in under 1971a and they have got to meet in order to come in under 1971a they have got to show that somebody has been denied the right to vote who is otherwise qualified to vote.

By Judge Brown:

That's what they are trying to show with those interrogatories. That's what they want to try to prove I presume by these depositions which have now been stalled. They are going to show with six or eight non-party registrars that [fol. 2326] these number of negroes have applied and have been refused; this number of white have applied and have been admitted and that there are no reasons to distinguish between the two. I suppose that's what they are going to try to prove.

By Mr. Stockett:

Your Honor, the point I am trying to get to is simply this, there are two kinds of proof that can be made as I see it in these voting cases. The first is the kind of proof where a man comes in and he correctly fills out the application form but yet he is turned down and the question then arises why was he turned down. Well, if the reason was race or color then the Government has got a right to come in and bring a suit against an individual registrar to redress that grievance. That's one kind of proof where a man came in and applied with all of the state requirements but yet was still turned down, that's one kind of proof, but as I see it that kind of proof would not invalidate the Mississippi statute in this case. The only kind of proof that would invalidate the Mississippi statute is the kind of proof a man came in to

register and he did not fill out the interpretation part, the constitutional interpretation part of the test or he was turned down on account of good moral character or he somehow failed to comply with one of the Mississippi requirements for voting. Now that's the only kind of proof that I believe can invalidate these requirements for voting and the trouble I believe they are faced with a logical impossibility [fol. 2327] because such a person is not otherwise qualified to vote. A person who fails to fill out, who fails to meet the literacy requirement is not otherwise qualified to vote.

By Judge Brown:

But if that is that statutory standard and I say if it is unconstitutional either on its face or in the setting which is established by the evidence and that's the only reason why he's not admitted then is he not otherwise qualified because he ought never have been subjected to this standard.

By Mr. Stockett:

But if the statute is constitutional on its face, Your Honor, then in determining if the statute is constitutional on its face which we contend all of ours are then the standard to be applied in the first place as to what constitutes otherwise qualified to vote has got to encompass all of the Mississippi requirements for registration in the first place.

By Judge Brown:

Well, that's what I am saying they are trying to prove that there are these people, I don't think they had this in mind at the moment when they tried to take these depositions, but by doing so they hope to establish to satisfy that requirement in 1971a; namely, that there are people who are otherwise qualified to vote who are denied the right to vote in Mississippi. Why? Because of unconstitutional statutes. Now that's their case and we have to decide that [fol. 2328] case. Why aren't they a proper party then? Doesn't Congress say they can do it? How can you attack the constitutionality of that? I don't let's keep the State of Mississippi out of this question now. Can't Congress give the United State Government that power?

By Mr. Stockett:

Well, Your Honor, I think not.

By Judge Brown:

Why not?

By Mr. Stockett:

And the reason that goes into another part of the argument which is covered in our memorandum on this point which I did not intend to go into. The reason is that the only basis for 1971a is the Fifteenth Amendment and the only effect of the Fifteenth Amendment the only reach of the Fifteenth Amendment on the state requirement for voting is just to delete or knock out all discriminatory provisions that appear in these state requirements for voting as they said in the Gwenn case which we cite that the only effect the Fifteenth Amendment has on state requirements for voting is if it says all white persons over the age of 21 can vote then the Fifteenth Amendment just deleted that word white and allowed anybody over the age of 21 to vote. That is the full reach and effect of the fifteenth amendment.

By Judge Brown:

Don't you think the Fourteenth Amendment has anything [fol. 2329] to do with voter rights?

By Mr. Stockett:

Sir?

By Judge Brown:

Doesn't the Fourteenth Amendment have anything to do with voter rights? 1971a.

By Mr. Stockett:

I think not. I would say no and its our contention that 1971a is bottomed only——

By Judge Brown:

What do you do with Baker against Carr then held that this was not only was a matter which a federal court could examine into?

By Mr. Stockett:

Sir? Baker versus Carr?

By Judge Brown:

Baker versus Carr on reapportionment, state reapportionment.

By Mr. Stockett:

I believe that was a great deal different question though, Your Honor.

By Judge Brown:

Its a question of power isn't it. In other words the Federal Court has now power to look into this unless its a violation of the Fourteenth Amendment.

[fol. 2330] By Mr. Stockett:

Of course there you had individuals bringing suit to vindicate their right, their individual rights under the Fourteenth Amendment but we——

By Judge Brown:

Can't the United States vindicate those rights if Congress has said they shall why not. That's what I don't.

By Mr. Stockett:

It cannot, the United States can vindicate a Fifteenth Amendment right to this extent as I indicated if there's discriminatory conduct or alleged discriminatory conduct on the part of any registrar they can bring a suit against him to have it enjoined, that's what the Raines case said and they can vindicate the Fifteenth Amendment, proper Fifteenth Amendment right.

By Judge Brown:

Your argument seems to convince me. Prove positively that there is need for further testimony because they have to perhaps to satisfy this element of 1971.

By Mr. Stockett:

Your Honor, that wasn't the intent of my argument.

By Judge Brown:

I know it wasn't.

By Judge Cox:

Mr. Stockett, you could admit if its all that simple [fol. 2331] that some of these colored people have been denied registration because they didn't pass these tests couldn't you?

By Mr. Stockett:

Sir?

By Judge Cox:

If its all that simple the State could admit that some of these people were denied registration because some of the tests under these statutes couldn't you? I mean if its quite that simple as indicated.

By Mr. Stockett:

That would be that's the case we think, Your Honor, in a lot of cases.

By Judge Cox:

If its all that simple why can't there be a stipulation to the effect that some colored people have been denied registration because they didn't pass these tests under 244 and 241a if that's all there is to this.

By Mr. Stockett:

I don't have the power to make any stipulations, Your Honor. I would prefer for Mr. Clark to make that kind of uh I think it may have happened.

By Judge Cox:

I am just wondering if you are not oversimplifying.

By Mr. Clark:

Your Honors please, Mr. Shands on the question of [fol. 2332] the State and State action which the Court has touched on before I believe.

By Judge Brown:

That's what I thought we were coming to hear today really and now he get's to talk last.

By Mr. Shands:

Beg your pardon.

By Judge Brown:

That's what I thought we were going to hear mostly today but I am glad to hear it finally from you.

By Mr. Shands:

If the Court please, in answer to Justice Brown's one of his questions why isn't the state have to be joined. A very clear answer to that is that it is not charged here, its not contended here that the State has ever committed any original act. The only way that they seek to get to the State is through a registrar. That's the last sentence of 1971 subsection c so unless the registrar has committed a discrimination you don't get a right to join the state under the 1960 civil rights act because it is the statute conceives on its fact that the State didn't do it and why does it do that because it says that when any official commits an act which violates subsection a then you may join the state and so forth so it is seeking to make an unconstitutional illegal act of the registrar the acts of the State itself as such and here is

[fol. 2333] the reason why you can't do that. Since the inception of the Constitution there has been both a difference and a distinction between the United States, the United States Government and a state and its government. If that were not so then every federal officer or agent would be the United States and that's not so. Unless that were so every state officer or agent would be the State of Mississippi and that's not so. Unless that were so then who would make the law in this nation, federal wise every state I mean every federal officer and Congress would be pitched out of the window. Bringing it to this case an illegal unlawful act of a registrar has to first be committed before you even get in the same township and range in the state. Now then——

By Judge Brown:

Now I accept that.

By Mr. Shands:

Can you say that the laws of Mississippi vary or are made or are unmade by each and every officer in this State instead of by the Legislature.

By Judge Brown:

Let me accept that statement and ask you this question. If a registrar doing precisely what the statute tells him to do is doing a wrong because the statute is unconstitutional——

[fol. 2334] By Mr. Shands:

It doesn't get to the State at all.

By Judge Brown:

He's amenable isn't he?

By Mr. Shands:

He is, but not the State.

By Judge Brown:

All right and if they show then that there are persons who were otherwise qualified to vote but for this unconstitutional statute then they bring themselves within the reach of 971a do they not so far as plaintiff is concerned? Let's not talk about the defendant yet.

By Mr. Shands:

No sir, for this reason——

By Judge Brown:

Why not?

By Mr. Shands:

You are assuming that an unconstitutional constitutional provision of the State of Mississippi or a state unconstitutional statute of Mississippi is the law but its not and it hasn't been the law of any state or of the federal government since the first Wednesday in March, 1893, the effective date of the Constitution. It was first announced in 1819.

[fol. 2335] By Judge Brown:

What I don't follow in all of this dialectic and that's all it is, its just plain fiction.

By Mr. Shands:

Beg your pardon.

By Judge Brown:

This is fiction, these are fictions and I think they serve a good purpose, they serve a good purpose, I am not going to destroy a fiction, I have destroyed a lot of other things but not that. If a man who is an agent of the State, a registrar, acts in excess of his statutory power the law regards that he is no longer an agent of the state, he has exceeded his authority. Isn't that about it.

By Mr. Shands:

There is a lot more than that to it but we'll take it, I'll go with you on—(Mr. Shands and Judge Brown talking at same time and unable to understand either.)

By Judge Brown:

He no longer has any legal justification for what he is doing. Now if what he is doing is to try to follow a statute which lacks fundamental validity because its unconstitutional why isn't his action equally in excess of his power.

By Mr. Shands:

Why, Your Honor, if the statute under which he purports to act is unconstitutional he has got no power.

[fol. 2336] By Judge Brown:

Of course that's what Ex Parte Young involved really.

By Mr. Shands:

That goes back to McCullough, Virginia, Texas versus White, Young, Poindexter versus—(Judge Brown and Mr. Shands both talking at same time and unable to understand either.)

By Judge Brown:

Didn't Ex Parte Young it was a challenge between some stockholders and an attorney general——

By Mr. Shands:

Yes sir.

By Judge Brown:

On the ground that a statute of North or South Dakota was unconstitutional.

By Mr. Shands:

Yes sir.

By Judge Brown:

All right now we have a case here of a plaintiff United States of America, against the Registrar of Hinds County saying that you are applying an unconstitutional statute. Now what's the difference between this and Ex Parte Young?

By Mr. Shands:

Why a great deal different if you are seeking to hold the State and I suspect maybe the Court may have lurking in its [fol. 2337] mind the Eleventh Amendment but the Eleventh Amendment doesn't touch as Your Honor as one of the participants in several of the Louisiana cases have properly held that the Eleventh Amendment does not come into play or touch the case topside or bottom until what; until first you decide that the suit is one against the state and then the bar and only then of the Eleventh Amendment rises, but the trouble with the position that Your Honor appears to be leading to is here first that the meaning of the Fourteenth and Fifteenth Amendments were both fixed and determined years ago and Ex Parte Virginia says and it can't be a fiction, Your Honor, otherwise I could repeal every law applicable to me that the legislature passed. It says Ex Parte Virginia you have followed it through and including St. Helena Parish from the Fifth Circuit that the Fourteenth and Fifteenth Amendment act and apply solely and alone to the persons who perform the unconstitutional or illegal act. There is no equivocation about that whatever and it also says that it cannot does not apply to the state. Now that it written on the page and the rationalization and the destruction of any conception that that is merely a fiction is bulwarked from McCullough versus Maryland today and I say as to counsel for the Government there is not and cannot be found and as long as the Constitution stands it will never be found a case which holds (1) that an unconstitutional provision of a state constitution is a law of the state; (2) that no statute of any state that violates the [fol. 2338] Fourteenth or Fifteenth Amendment is a law of the state; (3) that any act of any registrar or other officer which is performed under an unconstitutional act is not and cannot become the act of the state; (4) that no act of any registrar improperly and unconstitutionally applying

the provision of a valid statute is not and cannot ever become the act of the state. Now on that basis 601 must be he is bound to be and has to be invalid and unconstitutional or else the Fifth Circuit is going to be put in the position of going back and starting with their most recent case where you have applied that rule and go back beyond Pea versus Cox. Now this is no fiction.

By Judge Brown:

Well, why don't we do it as it ought to be done. The only difference between me and so many other judges I'm conscious that what I'm that some of the things we do are fiction. I think the fictions serve a real purpose in the law and we are, we just live with them all the time. They have the Eleventh Amendment which Mr. Clark makes the argument Ex Parte Young is a rule of necessity, it might have been a bad rule, but it gets over the Eleventh Amendment by taking the fiction that these people aren't even executing an act, they aren't even officers, because they are acting under an unconstitutional statute so it never was. Well, now that's silly really. It serves a purpose, it allows a court to [fol. 2339] test the constitutional validity of that statute and that's good.

By Mr. Shands:

No sir, I differ with the court in——

By Judge Brown:

Now let's carry it one step further. This same action when done by the state officer who's doing an act that doesn't exist because it never was is nevertheless held by an equally long line of cases to be state action if the Fourteenth Amendment is involved. Now both of them can't be see but they are and they are because each serves a purpose. Now why can't we approach this case in exactly the same way when the Eleventh Amendment is not present because the contestants are the United States on one side and the State of Mississippi or its agents on another. The question is is this law a constitutional one, has Congress empowered the United States to be a litigant and we don't have to get it

back in terms of what the rights of a private party would be against these people. Now why can't we approach it that way.

By Mr. Shands:

Very easy response to that, Your Honor, and the first reason is that an act of Congress can neither add to, take from or change the meaning of the section of the Constitution. That's the first reason. The second reason is that the difference between state action and acts of a state existing as set out in detail in this too long brief that I prepared [fol. 2340] existed long before the Fourteenth and Fifteenth and the Eleventh Amendment were ever heard of.

By Judge Brown:

Well, we never had the need for uh for uh.

By Mr. Shands:

But, Your Honor, for 144 years that has been the law of this nation and if this Court should seek to change that then what this Court would be doing would say Mr. Legislature of Mississippi, Texas, New York, Florida, Indiana, California it don't make any difference what law you pass because as these officers act so do they change what you said. The same thing will apply to the Federal Government. You will have overruled everything from Larsen versus Domestic Corporations backwards and forward.

By Judge Brown:

That's not the question we are talking about now. The question is not now whether evidence is admissible to show how this statute operates or what it means. The question is the standing of parties to sue, the right of the Government to sue and the standing and the right of the amenability of the State to be sued and it doesn't depend upon the personal action of the state agents, its the nature of government itself and whether Congress has it within its power to say that the national courts are open for the national government to directly challenge the constitutionality of a state [fol. 2341] statute which denies in the judgment of Congress

a federally guaranteed constitutional right. Now no court has yet ruled that that's beyond the power of Congress. You have written a very persuasive brief, its a nice structure, but you have got to take the next step.

By Mr. Shands:

No sir, because I don't walk down the same road the court Your Honor is traveling. I am not traveling that path at all.

By Judge Brown:

Oh you are not.

By Mr. Shands:

No sir, Your Honor. The path that I am trodding is that the State of Mississippi cannot have a cause of action created against it by virtue of an unconstitutional statute, constitutional provision or act of any officer. Now that's the path that our contention is and you concede the statute concedes the state didn't do it originally.

By Judge Brown:

Because the statute doesn't exist.

By Mr. Shands:

No sir. I am talking about your federal acts now. Your federal act concedes that the state didn't do this originally and why does it do that because it says it shall be deemed if a registrar does so and so. Now pretty much of that fiction theory that the Court was talking about was case aside [fol. 2342] in Nixon versus Carney and in several and in Ex Parte Young I believe where there was an effort made to put a representation of the state on an agency basis. Your Honor remembers those provisions and the Court says you can't put this on an agency basis and if you did you would be met at the threshold with two things. One, if its a crime there can be no agency about a criminal act; might be joint principals but you will never be an agency; secondly, if he is misapplying a valid statute he is exceeding

his authority and everybody knows it unless you cast aside and repeal the fact that everybody is charged with knowledge of the law so you can't put it on agency, it arose before the Fourteenth and Fifteenth Amendments came about. The court who announced those basis was sitting as the table of the Court will show and as I reiterate in the brief they knew what the constitution was and, Your Honor, as a parting word here you cannot have an indestructible union of indestructible states if you permit an officer of the federal government or of the state government to by unconstitutional and illegal acts cast my ability upon either the state or the federal government.

By Judge Brown:

What's going to be indestructible about a union that's made up of states each of whom are dedicated to the enforcement of the federal constitution which has as Article Three the federal judiciary that tests the validity of a state statute, rule or practice in a federal court in an action [fol. 2343] brought against the state. Now what's wrong about that. I mean what's destructive about that?

By Mr. Shands:

Here's what's wrong. You are jumping the basic hurdle of the republican government of this nation.

By Judge Brown:

You mean that a state cannot be brought into the national court.

By Mr. Shands:

No sir, here's the hurdle you are jumping. You are saying to me why shouldn't the United States Government and a state be subjected to having its liability vel non or the quantum of that liability determined by a federal court and you are saying Dugas Shands as long as a federal court is the guardian of the United States and of the state we won't let you get hurt but you are going to have to be liable and leave it to us to say whether or not. Now, Your Honor, with all deference that does not square with any principle upon which this is based.

By Judge Brown:

What do you think about the tidelands cases?

By Mr. Shands:

Beg you pardon.

By Judge Brown:

What do you think about the tidelands cases?

[fol. 2344] By Mr. Shands:

Entirely different question.

By Judge Brown:

There they——

By Mr. Shands:

U.S. versus Texas. Let's take San Bucinto. You took care the tideland case, the tideland case was a boundary dispute who owned what. Your Honor, that doesn't come within the same township and range of this. The questions here are two. One, can a state violate the Fourteenth Amendment. No. Can a violation be charged to it. No. Same thing as to the Fifteenth Amendment. Why is the Fourteenth and Fifteenth Amendment the same, Because Judge Wallace, I mean Judge Johnson In Re Wallace so said and the Fifth Circuit so affirmed in 266 or 7 when you affirmed In Re Wallace and adopted that. Every other court has adopted that. As to legislative history some is shown in this brief and it is legislative history. Have I used my time, Your Honor?

By Judge Cameron:

Well, we, I don't know. How much time do you want, Mr. Doar, in response?

By Mr. Doar:

Your Honor, about I would like about three or four minutes and Mr. Owen may be about the same. Just very brief, we don't have much in response.

[fol. 2345] By Judge Cameron:

Well, we haven't got any fixed time limitation but the strength of one of the judges, that's all, and we will go along as long as anybody feels like he has got something very important to say. You can take five minutes more, Mr. Shands.

By Mr. Shands:

I don't think I will need that, Your Honor. Legislative history that the Presiding Justice asked about there is just to use a slang term oodles of it.

By Judge Brown:

Its what?

By Mr. Shands:

A lot of it, Your Honor, and it is uh what I have put in this brief was taken from the Government's brief in U.S. versus Dozier and it is the statement of Mr. McCullough on the floor of the Senate, I mean of the House when he was explaining what 601b did as to what would be the parties defendant and its so terse it answers Judge Brown's question so completely if he is desirous to indulge in legislative history and it is Mr. McCullough and note if the Court please the warning that Mr. McCullough threw out. Let me ask him what it meant, who is going to be the party defendant. Let me say the way the gentleman has presented the matter is acurate. I would try to paraphrase that but I can't measure McCullough's words but I want to say this and I [fol. 2346] want you to note the significance of what I am going to say, now he is talking on the floor of Congress, when the attorney general brings that case into the federal court with all the authority and solemnity with which a case in a federal court is brought there is a naming of defendants and they are state officials. In that suit the Attorney General of the United States must prove to the satisfaction of the federal court that there is a pattern or practice in the political subdivision in question which denies the people otherwise qualified the right to vote by reason of race or color so there has been a day in court of the person who

could contravert by evidence that which is stated in the complaint. Why the Attorney General. I have never seen legislative history as definite and certain. If the Court wants to avoid the constitutional question the true intent of the statute in my judgment is that you do not join the state, it is not contemplated to be a party and its not even provided for. There was only one case and that was the case of Pea versus Cox which was where the State of Mississippi in a voter suit I mean the registrar in a voter suit out of Forrest County plead that it was a suit against the state when they charged him with discrimination. The Fifth Circuit said no its not, it was not because the registrar was misrepresenting the state, not representing the state. Thank you, gentlemen.

By Judge Cox:

You are saying Section 1971 is just unconstitutional then because some things you don't seem to have made any [fol. 2347] response to that they are talking about acting under color of office, he didn't have a valid statute or maybe no statute, say something about officials acting under color of office, de facto officials so really the substance of your argument is that this case 1971 is unconstitutional and void.

By Mr. Shands:

The last sentence of subsection c which seeks to make an illegal unconstitutional act of an officer the act or the state and charge the state in effect as principal.

By Judge Cox:

Is unconstitutional.

By Mr. Shands:

Yes sir, thoroughly so.

By Judge Cox:

You have some authorities on that?

By Mr. Shands:

There are 63 cases about in this brief.

By Judge Cox:

You oughtn't to have cited so many.

By Mr. Shands:

Well, Your Honor, I thought maybe if one might not suit the Court the other one would.

By Judge Cox:

Might read one and not the rest of them.

[fol. 2348] By Mr. Shands:

Well, I think any one of them will answer the question satisfactorily in the minds of the Court. Thank you, gentlemen.

By Mr. Clark:

May it please the Court; just in closing this reminder that we are dealing here with the authority asserted by the United States to come in and invoke the jurisdiction of this Court under this Section 1971 which says that whenever any person has engaged in unconstitutional action and this of course does not mean a sovereign, this means the registrar, then it continues and says that whenever in this proceeding any official of the state shall have committeed any act or practice constituting a deprivation this act or practice shall be deemed to be the act of the state. That simple deeming of the official act of the registrar's act as the act of the state is the grounds of unconstitutionality that we allege is in 1971 but in this argument I don't I hope the Court won't overlook that basically we are saying that this suit is wrongly brought against the State of Mississippi whether or not you consider 1971 unconstitutional because the whole fabric of our government comprehends that if you are going to test the validity or the invalidity rather of a state statute you sue the officer who is getting ready to hurt you under that statute.

By Judge Brown:

Well, now you do that why, because of the Eleventh [fol. 2349] Amendment ordinarily.

By Mr. Clark:

Dell, not necesarily that sir. 2281 or rather 2284 which provides the procedure for Three-Judge Courts says this if the action involves the enforcement, operation or execution of state statutes at least five days notice of a hearing should be given to the Governor and the Attorney General of the state. They don't contemplate the state ever being a party.

By Judge Brown:

Which of course is some more on the evidence that the law for its own purposes has contrived this nice little theory. Why would a federal rule or a statute require notice to a governor to come in and defend a non-existent statute or to justify a non-existent practice. Now the reason notice is required is we know for a fact that this is the state whether its race or whatever it is and this statute is a statute of the state and it either its existence depends upon the outcome of the litigation.

By Mr. Clark:

Judge, I wouldn't concede that. I would say that there are two separate bundles, convenient legal fictions or whatever you want to call them. There is the state which must necessarily remain a perfect being if its going to remain one of the entities that composes the union, one of the entities that retains the power in itself to amend the Constitution of [fol. 2350] the United States to dispose of the Federal Judiciary. This is the power that the states have over the very Bench that Your Honors are sitting on. These are powerful sovereigns that compose this sovereign union but the entire purpose of notifying the governor and the attorney general in my conception is that there will never be an instance when something as solemn as declaring a law of a state is going to be affected that the responsible officials of the government of the state which is a separate package

of people won't have notice of it. That's the only thing I think that it means. I don't think they are trying to get notice to this theoretically perfect being of a state. I think that they are telling this court in this very action there is not a bit of need in the world if you want to say that these statutes are unconstitutional you could have sued any one of the six registrars or any one of the other 76 and said just like Mr. Stockett said not that you have discriminated against me but you have put down on my form you marked on my form disqualified because I put something on there that the law required me to put down and the law is wrong, the law is unconstitutional, it violates my Fifteenth Amendment rights. 1971 says to the Federal Government you can come into the federal courts anytime a registrar discriminates and you can sue that registrar and then we get into the troublesome area of allowing his act to also be deemed the act of the state but we don't have to resolve that conflicting [fol. 2351] question here. The State of Mississippi is not a proper party to this litigation because of a long line of cases holding that the state can do no wrong, that the state is not an actor in this situation, that the problem is created not because what the state did or didn't do but because of what the registrar did or didn't do. This is the thing that starts 1971 moving a wrongful act by a registrar. Then it permits joinder of a state. Once the action is in being the state can be added but this is not, the state is not a necessary party and I would urge the Court to dismiss the State and dismiss the State Election Commission from this lawsuit so as to avoid any calling on this court to determine constitutionality of the statute. I think we ought to try these six——

By Judge Brown:

This is the first time anybody has mentioned the State Election Commission. Why aren't they a proper party? Don't they have a function under the statutory scheme?

By Mr. Clark:

Judge, the State Election Commission has only the function of discharging the commands of the statute and this is a mofion to dismiss, we take every allegation of the com-

plaint and admit it and there is not a single charge of wrongdoing to the State Election Commission. There are in here because they are mechanically in the statutory scheme and that's all.

By Judge Brown:

They provide that questionnaire don't they?

[fol. 2352] By Mr. Clark:

That's right. There is not a charge in here that what they have done in providing the questionnaire was in anywise wrongful or was in anywise a departure from the statute itself. Now they have charged the registrars with discrimination over and above and beyond their statutory authority but that is not true as to the Election Commission.

By Judge Brown:

But don't they attack isn't it fair to say that construed as the complaint must be at this stage they charge that the statute in requiring this questionnaire type of application blank does is unconstitutional in several respects?

By Mr. Clark:

Well, Judge, this couldn't be right because we are met with the impact of Atkins immediately. These very forms that this Election Commission prescribes fill in the problem that existed to the Fifth Circuit's ideas in Atkins.

By Judge Brown:

But this is the merits of the case, see we haven't gotten that far yet.

By Mr. Clark:

No sir, what I am talking about that these people are mechanics and that's all and to take the State of Mississippi out necessarily removes the State Election Commission. They are a party against whom no worthwhile relief what-
[fol. 2353] soever could be granted.

By Judge Brown:

Why wouldn't it be. I can follow your argument on the State of Mississippi but I have difficulty in seeing why if they have important even though mechanical obligations to perform under the statutory scheme why the Election Commission, the Governor, the Attorney General and whoever else it is aren't as amenable as are the registrars themselves. They are individuals who are doing these things in the name of the State which under fiction they don't really amount to acts of the State. Now why aren't they parties?

By Mr. Clark:

The first reason is that they are charged with no wrong doing. The second reason is no relief is sought against them and actually they are just its completely immaterial that they be parties to the lawsuit..

By Judge Brown:

Yes, but here for example, this is why I think there is a lot of basis for an omnibus suit of this kind. I have got two reasons for that. First, I think Judge Cox is certified to sit anywhere in this State I am sure. Judge Cameron and I are here because we are Circuit Judges and we can sit anywhere in Mississippi and its not a jury case and if there are ten cases we can hear ten as well as we can hear one at one time but uh.

[fol. 2354] By Judge Cameron:

You may be pointed that way but I am not. I can't sit as a District Judge in this State except at the discretion of the Chief Judge.

By Judge Brown:

Well, I have been appointed here. I know the statute says not less than one Circuit Judge. Now here if you have just one registrar Hinds County with the United States Government assuming I will concede now these people are going to obey the law a judgement rendered in this case between the Government and Hinds County along has no immediate

bearing upon the Election Commission with respect to continued use of those application blanks in the balance of Mississippi.

By Mr. Clark:

If the basis of course the only reason that you would be sitting as a Three-Judge Court would be an attack on constitutionality you could do you could make that attack against the registrar. Now I have some serious doubts and please don't understand that I am arguing this to you, I have serious doubts as to whether the United States Government can attack the constitutionality of a statute or whether 1971 really means what it says and then if its a pattern or practice of discrimination, but assuming only for the sake of argument this could be done Your Honors would be here for the purpose of testing constitutionality of the [fol. 2355] State Constitution and laws and if you determined at the end of that contest if this Three-Judge Court determined that these laws are wrong and you enjoined the Registrar in Hinds County you have on the basis that the laws are unconstitutional then you have wiped them out for the Election Commission and for every other registrar in every other county in the state and all you have got to do is to add to your injunction in this one lawsuit, you don't have to get into other lawsuits if after that lawsuit you determine these statutes don't square with the constitution they are nothing, they are void.

By Judge Brown:

That's the way it would ordinarily work but isn't it part of our system that the injunction is as between the parties to that case and the Governor and the Election Commission if not parties if not found by it they have to give deference to it but as long as they are not parties aren't they entitled to litigate it when and where they can. That's a position I seemed to have heard you make on other occasions and I think a pretty good legal position.

By Mr. Clark:

There is no doubt about the fact that an injunction issued between private parties affecting their private property rights does not bind non-parties who are not acting in concert or participation with them but of course you are permitted by the rules and its recognized under the decisions [fol. 2356] that an injunction extends beyond the parties to the extent of anybody that's acting in concert and participation with these people and I don't see how in the world that an injunction in one lawsuit that based upon unconstitutionality of state constitution provisions and statutes would not dispose of the question and if it didn't do it in one lawsuit you wouldn't have to file 82 others, you could simply join the other parties in that same litigation.

By Judge Brown:

One non-controversial question that I want to ask you. Let's assume you are right on the State of Mississippi as a defendant and we have got one registrar, Hinds County, what's left of this lawsuit and what are we going to do with it and what should we do on all this pre-trial where should we stop?

By Mr. Clark:

Judge, based upon Mr. Doar's position that he takes here and that the Government is assuming now in this case that the thrust of the lawsuit is unconstitutionality of these statutes let's take Pike County or Wilkinson since they are ones that would qualify all of the jurisdictional and venue prerequisites we would still litigate with him the authority of the United States to test constitutionality as opposed to pattern and practice because we say Congress has never given them any authority to go outside of that field and [fol. 2357] time and time again the Justice Department every agency of the Government has been to Congress to beg for rights to beg to litigate rights of private individuals so they don't have it and they don't think that they have it except as you find it given to them in 1971 so we would litigate that question with them but if that question were determined adversely to us and this Three-Judge Court said yes we do find statutory authority for them to test the

constitutionality of Mississippi law the contest would be on and the fur would be flying right there at that point. Of course you get into these subsidiary questions that we say here that first constitutional contest has got to be are they valid on their face. Then you get into a question if they are ambiguous. if they are arbitrary, if they meet any of the other criteria, if the only human, the inescapable human effect of the applications would be discrimination, racial discrimination prevented by the Constitution then you go back and find out why and you go back into application but, Judge, can you have a law or a constitutional provision in the State of Mississippi that is constitutional in Hinds County because the Registrar there follows it completely and and does not discriminate and nobody has charged him with discrimination in Hinds County at that particular junction and that he is doing it just exactly right and that the fair proportion of people of all races are getting registered and then turn over in Greene County or in Pike or in Leflore and have exactly the same law administered [fol. 2358] by a different man and a different context and make the statute unconstitutional. This is a real problem that I don't believe is properly presented to this Court where you have all of these multiple defendants and basically you have got the wrong that's being done not only to the Court's time with these extraneous issues but the wrong that's being done to every one of these individual defendants who ought not be in this lawsuit because it is essentially if anything if they have any rights at all under 1971 its a right to sue the registrar about a pattern or practice act and the unconstitutional we say claim that they would have to say well the state ought to be just hitched on in here and like they said now they are not going to get any relief against them but they are just in the context of that case they said they ought not be parties to the litigation until here was no registrar to sue. This is why they were why the sentence was added in the first place and I am through and I know the Court's finished with me too, but I would say this. I think maybe too narrow construction or too narrow emphasis was directed to the words of the Supreme Court of the United States in U.S. versus Alabama. This case didn't reserve just constitutional defenses. The words of the Supreme Court were any defenses constitutional or

otherwise to the validity of 1971c the last sentence which is part of 601b and this is our position with the Court today that you ought to reach these jurisdictional matters first in [fol. 2359] your interest and in the interest of every one of the defendants and we think that their resolution would bring a prompt termination to the litigation and most beneficial to the Court and of course the future could take care of itself. If there is a mistake made I presume that whichever party is agrieved by what he feels is a mistake is going to appeal it and get a final decision and I don't think that would be nearly as burdensome as traveling all the way to the end of the circuitous route of pursuing what's happened in 92 different registration offices and how its effected the statute and what's happened in this State since 1890.

By Judge Cameron:

All right, Mr. Doar, you and Mr. Owen take your time.

By Mr. Doar:

Well, Your Honor, I want to say just a few words. We sued the State of Mississippi in this case because we felt that we were not barred by the Eleventh Amendment because this involved the constitutionality of the state statutes in Mississippi and because of congressional authority given to us by section or by the amendment to subsection c of 1971 and that's our theory. We also believe, Your Honor, that the United States under 1971 has the power to challenge the constitutionality of state statutes in a suit against a single registrar. We believe that that issue is one that can be tested in that way as well. Now if we can't sue the state to test the constitutionality and if we can't sue the single [fol. 2360] registrar to test the constitutionality of the state statutes then it seems to us that the line of opinions or the line of authorities would begin with United States versus Texas becomes meaningless and that and the permanence of the union the Court said might be endangered if some tribunal is not entrusted with power to determine that according to recognized principles of law. Now as I understand it the State's argument is that private individual can test these constitutional questions but the government could not and yet our theory is that the state statutes in and

of their use because of the setting and the purpose and finally because of the number of persons in each race that were registered at the time that the statutes were passed makes them acts and practices that constitute discrimination against negroes. Now finally——

By Judge Brown:

Well, now in showing that do you have to bring yourselves within the two or three elements of 1971a that people were otherwise entitled to vote?

By Mr. Doar:

Yes, we would show that. We would show that people were under the Raines case we as guardian of the public interest have the authority to challenge anything that deprives people otherwise qualified.

By Judge Brown:

Well, would you construe that provision of the [fol. 2361] statute then to require that you establish as to at least one voter that there has been a denial of his right to vote because of an unconstitutional statute.

By Mr. Doar:

I believe we would show whether we have to show it or not I believe that we would show that there was a nature of controversy that there was a uh these statutes were used to deprive people of the right to vote negroes.

By Judge Brown:

Well, now specifically say for this new one was put in in 62 on good moral character aren't you going to have to be able aren't you going to have to provide at least voter who was turned down under that?

By Mr. Doar:

I don't think you have to show it doesn't necessarily be turned down, it could act as a deterrent, it could act as a

deterrent and in that way the fact that the person didn't go up to apply in face of that statute is as much deprivation if they actually do go up and apply.

By Judge Brown:

Well, now then tell me one last simple thing. If the Court were to hold that the Government is a plaintiff a proper plaintiff under 1971a and that this District Court has jurisdiction over three voting registrars what relief do you get by having the State in that you wouldn't get if you [fol. 2362] won all the way with those three defendants in?

By Mr. Doar:

Well, we get the relief that the Court, uh we get the relief that the Court mentioned here that the officials throughout the State of Mississippi would comply with the decision of the Court and as I remember it I am not sure of this some of the Three-Judge Courts cases involving interstate transportation in Alabama although the Court would declare a particular statute unconstitutional as applied say to the Birmingham terminal system the rest of the state just wouldn't pay any attention to that determination at all. We would like to avoid that if we could. Now finally nothing has been said today with respect to the statistics and the theory that a statute can be unconstitutional if passed at the time when there are a large number uh a great number of white people already registered and very few negroes registered and the proof was such that negroes had been kept off the rolls by one way or another.

By Judge Cameron:

You have some sort of notion that eventually southern states have got to make an equalization either by lopping off whites or boosting up negroes so their their percentage of the population will be represented in the voting booth?

By Mr. Doar:

No, I don't have that at all.

[fol. 2363] By Judge Cameron:

You argued that I thought in the——

By Mr. Doar:

No sir but I say that you in the Atkins case, Your Honor, recognized the principles the freezing principles, you didn't apply them but you recognized them.

By Judge Cameron:

We said we would leave it for another case in a suit brought for the purpose of freezing.

By Mr. Doar:

We have no dispute of the power of the Federal Court to invoke the freezing principle to give relief where necessary. Now we say that that case involved the constitutionality of state statutes. The freezing principle was more pertinent although we think its pertinent in other cases too its pertinent in cases where statistics show that when a statute was passed requiring unregistered voters to meet a requirement and exempt registered voters from meeting that same requirement such as to read and interpret 1954 such as the good moral character of 1962, such as the coming back and finding out for yourself, a more onorous procedure in 1962. Registration in Mississippi is permanent and all persons who are previously registered are exempt. Now one of our elements of the proof that we would intend to offer would be what the statistical picture showed with [fol. 2364] respect to registration and at the dates that these laws were passed.

By Judge Cameron:

You want us to give relief for what those old gentlemen whose bones are resting out on the hills here did way back in 1890 and 95.

By Mr. Doar:

No, Your Honor. I want this Court to consider that fact along with the other facts in the case in making its determination. That's what we want the Court to do.

By Judge Brown:

Tell me one thing, Mr. Doar. Do you have any plans for any other pre-trial depositions or discovery depositions or interrogatories other than the twelve or so that have been suspended and the depositions of the party registrars on which you were working by mutual agreement?

By Mr. Doar:

No, Your Honor, and as a matter of fact we concluded not even to press for those because as I told the defendants and I would like to tell the Court the questions that we would ask these people doesn't go into why did you register that person or why did you register that person, why didn't you register that person. All we want to do is just how he applied the statutes, we would have this read and interpret, what was your practice, would you put the sections in a drum and draw them out or did you have a book or did you [fol. 2365] have cards, did you require everyone to take the section, how did you grade the section, what did you do, did you have a set of standard answers or didn't you. Those question which would be very few in number. Not what did you do with that particular person.

By Judge Cox:

You contend that that throws some light on the constitutionality of the act?

By Mr. Doar:

Yes, it does, that's our theory, Your Honor.

By Judge Cox:

You think there's something built in for negroes?

By Mr. Doar:

No, because of the unlimited discretion, that's part of the proof on the unlimited discretion and then of course Judge Brown asked us to prove that certain negroes have been deprived. We wouldn't necessarily have to call the registrars for that. We would show that by the records.

By Judge Cameron:

How many states now have literacy tests?

By Mr. Doar:

How many have literacy tests. I believe 17.

By Mr. Lott:

20.

By Mr. Doar:

20, but its not the literacy test that we complain of. [fol. 2366] The interpretation that's what we are quarelling about.

By Judge Cameron:

Have you brought a suit like this in any other state?

By Mr. Doar:

Yes.

By Judge Cameron:

Where?

By Mr. Doar:

In the State of Louisiana.

By Judge Brown:

Is that the one just last week?

By Mr. Doar:

No sir, that's a case that's pending for decision before Judge West, Judge Christianberry and Judge Wisdom testing the constitutionality of the Louisiana statute requiring the citizens to read and interpret any section of the state or federal constituiton.

By Judge Brown:

Has that been submitted yet?

By Mr. Doar:

It has been submitted.

By Judge Cameron:

How long ago?

By Mr. Doar:

It was submitted uh the case was tried in March and [fol. 2367] briefs were due by the 1st of May and I think the State received several extensions in which to file its brief and ultimately the Court considered the matter submitted in the middle of August.

By Judge Cameron:

And you had proof like this in that record too did you?

By Mr. Doar:

Yes.

By Judge Cameron:

All right, anybody else got anything they want to say? Mr. Owen, would you like to make a statement?

By Mr. Owen:

The only point I was going to make was raised by a question one of you had earlier about we have difficulty with the language of pattern and practice suits. Now this suit as Mr. Doar said attacks the constitutionality of certain Mississippi statutes but also in terms of relief we ask for finding of pattern and practice of discrimination because of the adoption and use of unconstitutional statutes. Now we feel there is supporting legislative history Senator Keating in supporting the bill in 1960 on the floor said that the adoption of an unconstitutional statute would be a pattern and practice of discrimination uh and uh I just wanted to uh make that point.

[fol. 2368] By Judge Brown:

Well, do you see any reason uh isn't there something contradictory with this present proceeding and the typical pattern and practice proceeding that's committed to a district court to have a Three-Judge Court sitting in Jackson or Meridian going into all the merit of details that might involve 92 registrars who are entitled to be have that case tried in their own divisions in their own districts. I will put it another way is there any reason why the Court if we were to conclude that this testimony that you want to develop has a relevance on the constitutional question that the Court itself could restrict it for that purpose and not let its admission drag us unwittingly into a pattern and practice thing that will set in voter referees and all that sort of stuff?

By Mr. Owen:

Well, I think the Court and under the complaint would be limited I mean for example uh we wouldn't introduce loads of proof about a guy who comes in and the registrar says you can't even get the form. Seems to me that the proof in this case must relate to some aspect of the constitutionality of the statute you know such as discriminatory selection this relates to so much discretion vested in the registrar, so much discretion he can discriminatorily select the section of the constitution, he can give assistance to uh people, he can grade them in a discriminatory manner, but I think the [fol. 2369] proof certainly is going to be circumscribed but with respect to the second thing that you asked the point I am making is that the statute the adoption of the statute itself we contend in this case is the pattern and practice of discrimination. I don't mean to suggest that what we want to do is put proof of a typical discrimination suit in to show a pattern and practice but the proof necessary to show the unconstitutionality unconstitutional effect of the statute and then you have a declaration of unconstitutionality and then we contend that by virtue of the fact that the State of Mississippi adopted an unconstitutional statute that in and of itself constitutes a state wide finding of pattern and practice, should constitute a state wide finding of pattern and practice of discrimination.

By Judge Brown:

But if we followed you that far we might be confronted with the task of appointing referees mightn't we to operate under a statute which we hold is unconstitutional doesn't seem to be very seems to be incongrous.

By Mr. Owen:

Well, the letter which we sent to the Court earlier suggested as this is one of the issues which the Court would have to be confronted with the effect of a finding of a pattern or practice seems to me there are several possibilities which of course don't arrive until such a finding is made. It could be taken care of by the District Court by a single [fol. 2370] Judge once you make the finding I mean the operation of the provision might not be under the control of the Three-Judge Court but a single Judge in this District and in the Northern District, but uh this issue is not really ripe but it certainly is an issue in the case if the court finds a pattern and practice.

By Judge Cox:

Mr. Doar, would you agree with the thought if the other side would stipulate with you that the colored people had been denied registration because they had flunked the intelligence test under 241a and 244 or the good moral character test under 244 that that would be all that you would need on this discovery process?

By Mr. Doar:

No, I wouldn't.

By Judge Cox:

You have something beyond that.

By Mr. Doar:

I think our proof would be that negroes have been denied in the past when they met the standards. No that wouldn't solve the problem.

By Judge Cox:

In other words you want your evidence to go further than that. You are trying to prove something in addition to that.

[fol. 2371] By Mr. Doar:

Yes.

By Judge Cox:

What?

By Mr. Doar:

Just to show how the statute various ways the statute has been used and that it has in fact been used not to reject negroes who flunked but it was used to reject negroes that passed.

By Judge Cox:

To reject negroes who passed?

By Mr. Doar:

Yes.

By Judge Brown:

Who ought to have passed.

By Mr. Doar:

Who ought to have passed, I mean like—unable to understand counsel. If they will stipulate to that and to a number of other things like that.

By Judge Cox:

You think that reflects on the constitutionality of the statute.

By Mr. Doar:

I think it shows that there is a controversy.

[fol. 2372] By Judge Cox:

We are not talking about a controversy. We are talking about whether these acts are constitutional or unconstitutional.

By Mr. Doar:

I think it doesn't necessarily reflect on the constitutionality but I think its a relevant issue in this case.

By Judge Brown:

In other words its like the case involving the atomic energy you have to prove the nature of the phenomena before the court can ascertain whether it denies a right to the person who is claiming.

By Mr. Doar:

Yes sir.

By Judge Brown:

Well, we have been in everything else. Now we are in atomic energy.

By Judge Cameron:

Court will recess until court in due course.

(This concluded the hearing of this cause.)

[fol. 2373-3038] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 3039] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action Number 3312

UNITED STATES OF AMERICA, Plaintiff,

v.

STATE OF MISSISSIPPI, ET AL, Defendants

OPINION—Filed March 6, 1964

Before CAMERON and BROWN, Circuit Judges, and COX, District Judge,

CAMERON, Circuit Judge:

In this action, the "Indestructible Union" member of the partnership which constitutes the government of this country makes a frontal attack upon the other member, the "Indestructible State" of Mississippi, seeking to enjoin the enforcement of certain laws of the State defining the qualifications of the "electors" who shall vote in elections for president and vice president of the United States and members of the Congress. The State of Mississippi and its people have, in the Constitution of 1890 and thereafter, *enacted constitutional and statutory provisions covering the whole field* of choosing of such "electors". The United States seeks to strike down some of these enactments upon the claim that they violate the Fourteenth and Fifteenth Amendments of the Constitution, in that they deny certain rights to Negroes because of their race, color or previous condition of servitude. We hold that, from the face of the pleadings, the effort to strike them down may not succeed.[1]

[1] This Court has met on two occasions with counsel for the various parties. On the first meeting we had an exten- [fol. 3040] sive pretrial and exploratory hearing during

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The United States of America filed a complaint invoking the jurisdiction of this Court under the pro-

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which the large number of lawyers and the Court discussed generally the questions presented and the procedural means by which they could best be approached. There was general discussion about the issues involved, the use of discovery procedures and other matters and tentative orders were entered which, by the action taken here, are rendered inoperable.

After a change in the personnel of the Court, another hearing with counsel was held and full argument was invited in which each litigant urged the procedures he thought desirable. The defendants had filed, prior to their answers, a number of motions attacking the constitutionality of some of the statutes relied upon by the plaintiffs when given the constructions placed on them by the plaintiff; and each defendant had filed a motion to dismiss the claim against it or him, on the ground that the complaint failed to state a claim, that the Court did not have jurisdiction of the subject matter or of some of the parties and had moved that they be heard in advance of any trial on the merits.

Following that argument and after correspondence between the Judges, two additional conferences were had. The plaintiff had answered in large volume the interrogatories propounded to them by certain of the defendants and had taken a number of depositions, but had not completed its discovery procedures. The defendants were claiming the right, if their motions to dismiss were denied, to begin their discoveries and to take the depositions of each of the registrars in the State of Mississippi or of prior registrars. It further appeared that no matters outside the pleadings had been presented to the Court, that no motion for summary judgment under Rule 12(c) had been made or the propriety of it suggested, and that no affidavit or counter affidavits had been filed which complied with the requirements of Rule 12(c) and 52 F.R.C.P. It was further found that the interrogatories had been an-

visions of 42 U.S.C. § 1971(d),[2] 28 U.S.C. § 1345,[3] and 28 U.S.C.

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swered and sworn to by various attorneys for the plaintiff and set forth the results of their investigations and were made up of legal or factual conclusions from hearsay evidence or were otherwise inadmissible in evidence.

We concluded that the case could be heard and decided much more expeditiously by considering the complaint and all well-pleaded averments, stripped of legal opinions and conclusions, as factually true and could reach a decision in keeping with accepted legal principles and could do justice to the parties as completely as if the contents of the answers to interrogatories and the depositions should be considered.

The defendants have pressed their motions to dismiss, claiming the right to be heard before trial on the merits on such grounds as failure of the complaint to state a claim, nonjurisdiction of the subject matter or the parties, [fol. 3041] and like questions. We concluded that this position was sound and in the interest of justice and have therefore disposed of the case on the face of the pleadings, having rejected all of the depositions and interrogatories and the answers thereto (although none of them were ever offered in evidence or presented to the Court).

We think this is not in conflict with such cases as Conley v. Gibson, 355 U.S. 41. Compare KVOX v. Associated Press, 299 U.S. 269, 278; Battaglia v. General Motors Corp., 169 F.2d 254, certiorari denied 355 U.S. 887; Flanders f. Coleman, 250 U.S. 223; Rhode Island v. Massachusetts, 37 U.S. 657, 659.

[2] "1971. Voting rights—Race, color, or previous condition not to affect right to vote.

(d) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law. 71 Stat. 637, Sept. 9, 1957."

[3] "§ 1345. United States as plaintiff.

Except as otherwise provided by the Act of Congress,

§ 2281.[4] The State of Mississippi was joined as a party defendant pursuant to § 601(b) of the Civil Rights Act of 1960.[5] The other defendants are the three members of the Miss. State Board of Election Commissioners, and six county registrars of voters (the regularly elected Circuit Clerks of their respective counties).

The complaint is filed under the authority of 42 U.S.C. § 1971 (a)—(c).[6] It attacks the validity of the Mississippi

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the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress. June 25, 1948, c. 646, 62 Stat. 933."

[4] "§ 2281. Injunction against enforcement of State statute; three-judge court required.

An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any [fol. 3042] district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title. June 25, 1948, c. 646, 62 Stat. 968."

[5] "Whenever, in a proceeding instituted under this subsection any official of a State or subdivision thereof is alleged to have committed any act of practice constituting a deprivation of any right or privilege secured by subsection (a) of this section, the act or practice shall also be deemed that of the state and the State may be joined as a party defendant and, if, prior to the institution of such proceeding, such official has resigned or has been relieved of his office and no successor has assumed such office, the proceeding may be instituted against the State." (Now a part of 42 U.S.C. § 1971 (c).

[6] "(a) All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, town-

Constitution and statutes which govern registration for voting. It contains four claims. In the plaintiff's words, these claims are described as follows:

> "The first claim of the Complaint attacks the validity of Section 244 of the Mississippi Constitution, adopted in 1955 and used since that time by registrars throughout Mississippi, which provides as a prerequisite for registrations that persons must read and write and give a reasonable interpretation of any section of the Mississippi Constitution and a statement of the duties and obligations of citizenship to the local county registrar on a form provided by the State Board of Election Commissioners. The Complaint attacks Section 244 and its implementing legis- [fol. 3044] lation on the following grounds:
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> "1. Section 244 vests unlimited discretion in the registrar and in light of its setting of white political supremacy and a racially segregated society it is an unconstitutional device to disfranchise Negroes;
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> "2. Section 244 imposes new and more stringent requirements for registration following a long period of racial discrimination in the registration process,

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ship, school district municipality or other territorial subdivision shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

Intimidation, threats, or coercion

(b) No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such [fol. 3043] other person to vote for, or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners

and exempts from the new requirement most of the white citizens, the inevitable effect of which is to perpetuate past discrimination;

"3. In a State where public educational facilities are and have been racially segregated and those for Negroes are inferior, the interpretation test which bears a direct relation to the quality of public education violates the Fifteenth Amendment;

"4. Section 244 is vague and provides no objective standards for its administration;

"5. There is no reasonable or legitimate interest on the part of the State in requiring as a prerequisite

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from the Territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

Preventive relief; injunction; costs; State as party defendant

(c) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. In any proceeding hereunder the United States shall be liable for costs the same as a private person. Whenever, in a proceeding instituted under this subsection any official of a State or subdivision thereof is alleged to have committed any act or practice constituting a deprivation of any right or privilege secured by subsection (a) of this section, the act or practice shall also be deemed that of the State and the State may be joined as a party defendant and, if, prior to the institution of such proceeding, such official has resigned or has been relieved of his office and no successor has assumed such office, the proceeding may be instituted against the State. 74 Stat. 90, May 6, 1960."

for voting that citizens interpret certain of the legal and hyper-technical provisions of the Mississippi Constitution. "The second claim of the Complaint attacks Section 241A of the Mississippi Constitution enacted in 1960 which provides that applicants for registration shall be of good moral character. The Complaint alleges that this constitutional provision is invalid because, since registration is permanent, it exempts most of the white citizens in Mississippi from its requirements. It also provides no objective reference [fol. 3045] by which the county registrar may determine good moral character and thus is so vague and indefinite as to permit registrars to arbitrarily reject Negro applicants.

"The third claim attacks the validity of a Mississippi statute enacted in 1960 which permits registrars to destroy registration records. In 1960 Congress enacted Title III of the Civil Rights Act requiring county registrars to retain and preserve the very records which under Mississippi law are permitted to be destroyed.

"The fourth claim in the Complaint attacks a package of legislation adopted by the Mississippi legislature shortly after the Court of Appeals for the Fifth Circuit issued an injunction on April 10, 1962 forbidding the registrar in Forrest County, Mississippi, from engaging in discriminatory practices in registration for voting. This legislative package included House Bills 900, 903, 822, 904. H. B. 900 requires that applicants for registration complete a letter-perfect application form without assistance in order to qualify to register. H.B. 903 prevents registrars from advising applicants for registration as to the reason such applicant was rejected, because such would constitute assistant to the applicant. H.B. 822 and 904 provide for publication of the names of applicants for registration, require an applicant to wait an extended period even before he determines whether he is registered or denied registration, and permit any qualified elector to challenge the qualifications of any applicant whose name is published. This package of

[fol. 3046] legislation is attacked as arbitrary and unreasonable. It exempts from its provisions most of the white citizens because they are presently registered to vote and its unquestioned effect is to impose more burdensome and stringent requirements for registration on persons not registered prior to 1962. The legislation as with the other laws under attack provides no objective standards for its administration.

"The relief requested by the United States is a declaration of the invalidity of Sections 244 and 241A of the Mississippi Constitution and the implementing legislation of both provisions, the records destruction legislation, and four bills in the package of legislation enacted in 1962. An injunction vitiating the effects of the invalid Mississippi laws and practices thereunder is requested. [Actually the complaint prays for a mandatory injunction setting up court created state voter registration qualifications for Negroes only and requiring the defendants to use such qualifications in registering Negroes who may apply after the date of such an order.] Plaintiff also requests the court to find that the use of the invalid legislation has deprived Negro citizens of the right to vote on account of their race and that the deprivations have been pursuant to a pattern and practice of racial discrimination. This finding is sought to set in motion 42 U.S.C. 1971(e) of the Civil Rights Act of 1960."

II

Each defendant has moved to dismiss the complaint for failure to state a claim on which relief could be granted and [fol. 3047] the defendant Registrars of voters who are nonresidents of this district have moved to dismiss for want of venue jurisdiction; the defendant Registrar of Claiborne County has moved for dismissal or for transfer to the division having venue jurisdiction of her county. Each defendant Registrar has also moved for a severance and separate trial. No supporting or counter affidavits were or have been filed. Answers have been filed by all defendants.

III

It is elementary that in ruling on the motions to dismiss, the Court must treat them substantially as demurrers testing the legal sufficiency of the complaint. The Court must assume all of the complaint's well-pleaded facts, as distinguished from conclusions, deductions and averments of law, as established for the purpose of the motion.[7] Neither the answers of the defendants nor any part of the discovery procedures should be considered.[8]

[fol. 3048]

IV

The Complaint further alleges the following as facts: All registrars of voters in the State of Mississippi since at least 1892 have been white citizens. In the counties of the defendant registrars, the statistics on voting age popu-

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[7] Collins v. Hardyman, 341 U.S. 651; Halliburton Co. v. Norton Drilling Co., 302 F.2d 431. Modern practice treats such motions as performing every office of the former demurrer, but as unhampered by any of its technical rules. The Complaint must be viewed in a light most favorable to the plaintiff.

[8] "Plaintiffs did not submit the case to be decided upon the merits upon the bill, answers and affidavits. Defendants' motion to dismiss, like the demurrer for which it is a substitute (Equity Rule 29) [28 U.S.C.A. following section 723] was addressed to the sufficiency of the allegations of the bill. For the purpose of that motion, the facts set forth in the bill stood admitted. For the purpose of that motion, the court was confined to the bill and was not at liberty to consider the affidavits or the other evidence produced upon the application for an interlocutory injunction." Polk Co. v. Glover, 305 U.S. 5; as to the rejection of conclusionary allegations of fact and law, see Newport Nws Shipbuilding & Drydock Co. v. Schauffler, 303 U.S. 54, and Snowden v. Hughes, 321 U.S. 1; Gibbs v. Buck, 307 U.S. 66.

lation of Negro and white persons and the approximate voter registration of each race are as follows:

	White		Negro	
	Voting Age Population	Registration	Voting Age Population	Registration
Amite	4449	3295	2560	1
Conhoma	8708	8376	14604	1371
Claiborne	1688	1440	3969	138
Lowndes	16460	5869	8362	63
LeFlore	10274	9803	13567	258
Pike	12163	9989	6936	124

At the time of the adoption of the Mississippi Constitution of 1890 there were substantially more Negroes than whites in Mississippi. By 1899, approximately 122,000 or 82% of the white males of voting age and 18,000 or 9% of the Negro males of voting age were registered to vote in Mississippi. Since 1899, a substantial majority of white persons reaching voting age in Mississippi have become registered voters. The percentage of Negroes registered to vote has declined.

During the period from 1899 to approximately 1952 Negroes were not allowed to register to vote; literate Negroes were required to interpret sections of the Mississippi Constitution; and Negroes were excluded from Democratic primary elections. During this time, victory in the Democratic primary in Mississippi was tantamount to election. By 1951, a much higher percentage of the Negroes of voting age in Mississippi were literate than in 1890.

[fol. 3049] In 1952, a proposed amendment to Section 244 of the Constitution, providing that in the future, it would be prerequisite to becoming an elector that a person be able to read and write any section of the Mississippi Constitution and demonstrate a reasonable understanding of such section and the duties and obligations of citizenship, was defeated by the voters.

In 1954, at least 450,000 or 63 per cent of the white persons of voting age in Mississippi were registered to vote. In 1954, approximately 22,000 or five per cent of the Negroes of voting age in Mississippi were registered to vote.

In 1954, after the Supreme Court had declared state operation of racially segregated schools unconstitutional,

white citizens councils—not parties to this action—were formed in Mississippi. The purpose of these organizations was the maintenance of racial segregation and white supremacy in Mississippi. The first statewide project undertaken by these organizations was the attempt to induce the white voters of Mississippi to adopt the proposed amendment to Section 244 of the Mississippi Constitution of 1890.

Of the approximately 472,000 registered voters in Mississippi who were eligible to vote on this proposed amendment in 1954, about ninety-five per cent were white; fewer than five percent were Negro. The amendment was adopted in a state where the public education facilities were and are racially segregated, and where such facilities provided for Negroes were and are inferior to those provided for white persons.

Since 1955, the defendant registrars, as well as many other registrars in Mississippi have enforced the requirements of Section 244, as amended, when Negroes have attempted to register to vote, by requiring Negroes to interpret sections of the Mississippi Constitution and to [fol. 3050] demonstrate their understanding of the duties and obligations of citizenship on the form prescribed by the State Board of Election Commissioners.

In 1960, approximately 500,000 or 67 per cent of the white persons of voting age in Mississippi, and approximately 20,000 to 25,000, or five per cent of the Negroes of voting age were registered to vote.

Of the approximately 525,000 registered voters in Mississippi who are eligible to vote on the proposed amendment adding Section 241-A to the Mississippi Constitution, about 95 per cent were white; fewer than 5 per cent were Negro. The amendment was adopted in a state where all state officials were white.

The suits filed by the United States against several county voter registrars and the action taken by the Court of Appeals in issuing an injunction against T. C. Lynd, the Circuit Clerk and Registrar of Forrest County, Mississippi, concerning voter registration discrimination, were matters of common knowledge throughout the State of Mississippi.

Some registration application forms, including some forms received by defendant H. K. Whittington in Amite County, Mississippi, have been destroyed.

In late 1961 and early 1962, Negro citizens and organizations conducted a voter registration drive in Mississippi for the purpose of increasing the number of Negroes eligible to vote in the 1962 Mississippi primary elections. For the first time in many years Negroes were candidates for the office of representative in the Congress of the United States. These facts were widely publicized and were matters of common knowledge throughout Mississippi.

[fol. 3051] V

In support of its motion to dismiss, the State of Mississippi contends that Section 601(b) of the Civil Rights Act[9] is unconstitutional as applied to it. Its position is that the Fifteenth Amendment forms the only basis for 42 U.S.C. § 1971,[10] and that this amendment is directed to persons through whom a state may act and not to the sovereign entity of the state itself. The State of Mississippi also contends that all legislation by which Congress may choose to implement the Fourteenth Amendment is subject to the same objection. It supports these contentions by citation of numerous authorities.[11] The contentions appear to us to present a substantial constitutional claim. Cf. *Gibbs* v. *Buck*, Note 9, supra.

In *Ex parte Virginia*,[12] the Supreme Court of the United States used the following language:

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[9] See Note 5.

[10] See United States v. Raines, 362 U.S. 17.

[11] E.g., the United States Supreme Court cases of: McCulloch v. Maryland, 4 Wheat 316; Osborne v. Bank of the United States, 9 Wheat 738; Texas v. White, 7 Wall. 700; Ex parte Virginia, 100 U.S. 339; Poindexter v. Greenhow, 114 U.S. 270; and Ex Parte Young, 209 U.S. 123; and a number of opinions from the United States Court of Appeals for the Fifth Circuit, the most recent of which is St. Helena Parish School Board v. Hall, 287 F.2d 376.

[12] Note 11, supra.

[fol. 3052] "They [the proscriptions of the 14th Amendment] have reference to actions of the political body denominated a State, by whatever instruments or in whatever modes that action may be taken. A State acts by its legislative, its executive or its judicial authorities. It can act in no other way. . . . Whoever, by virtue of public position under a State government, deprives another of property, life, or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name ond for the State, and is clothed with the State's power, his act is that of the State. . . .

"But the constitutional amendment was ordained for a purpose. It was to secure equal rights to all persons, to insure to all persons the enjoyment of such rights, power was given to Congress to enforce its provisions by appropriate legislation. *Such legislation must act upon persons, not upon the abstract thing denominated a State but upon the persons who are the agents of the State in the denial of the rights which were intended to be secured.*"

[Emphasis added.]

This reasoning from *Ex parte Virginia* has been recently approved in *Cooper* v. *Aaron;*[13] and in *United States* v. *Raines.*[14] as to the Fifteenth Amendment. In the case of *Poindexter* v. *Greenhow,* [15] the Supreme Court said:

[fol. 3053] "In the discussion of such questions the distinction between the government of a state and the state itself is important and should be observed. In common speech and common apprehension they are usually regarded as identical; and as ordinarily the acts of the government are the acts of the State, because within the limts of its delegation of power, the government of the State is generally confounded with the State itself, and often the former is meant when

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[13] 358 U.S. 1.

[14] Note 10, supra.

[15] Note 11, supra.

the latter is mentioned. *The State itself is an ideal person, intangible, invisible, and immutable. The government is an agent, and, within the sphere of the agency, a perfect representative; but outside of that it is a lawless usurpation.* The Constitution of the State is the limit of the authority of its government, and both government and State are subject to the supremacy of the Constitution of the United States and of the laws made in pursuance thereof. So that, while it is true in respect to the government of a State, as was said in Langford v. United States, 101 U.S. 341 (Bk. 25, L.ed 1010), that the Maxim, that "the King can do no wrong" has no place in our system of government; yet it is also true, in respect to the State itself, that whatever wrong is attempted in its name is imputable to its government and not to the State, for, as it can speak and act only by law, whatever it does say and do must be lawful. *That which, therefore, is unlawful because made so by the supreme law, the Constitution of the United States, is not the word or deed of the State, but is the mere wrong and trespass of those individual persons who falsely speak and act in its name.* It was upon the ground of this important distinction that this court proceeded in the [fol. 3054] case of Texas v. White, 7 Wall., 700 (74 U.S. bk. 19, L.ed 227) when it adjudged that the acts of secession which constituted the civil war of 1861 were the unlawful acts of usurping State Governments and not the acts of the States themselves, inasmuch as 'the Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States'; and that consequently the war itself was not war between the States, nor a war of the United States against States, but a war of the United States against unlawful and usurping governments, representing not the States, but a rebellion against the United States."

In *Ex Parte Young*,[16] the court was explicit in holding that the proper defendant in an action seeking to prevent

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[16] Note 11, supra

the enforcement of an unconstitutional statute was not the sovereign state itself but rather the officer charged with the enforcement of the statute.[17]

Although the cases relied on principally relate to instances in which the Eleventh Amendment was invoked as a bar to the action brought, the State of Mississippi contends that it does not rely on the Eleventh Amendment here. It rather asserts that the legal reasoning which allows individuals to pursue alleged violations of Fourteenth and Fifteenth Amendment rights caused by "State Action," despite the provisions of the Eleventh Amend-
[fol. 3055] ment, is equally applicable to demonstrate the non-liability of the State in the present suit.

In the latest and only comment on the subject, the Supreme Court of the United States expressly pretermitted any decision on the constitutionality of Section 601(b) in its per curiam opinion in United States v. Alabama.[18] The Court of Appeals for the Fifth Circuit has taken the same attitude in a direct comment on the same question in *United States* v. *Atkins*,[19] in which the Court stated:

> "In that case [United States v. Alabama], the Supreme Court intimated no views upon 'any defenses, constitutional or otherwise, that may be asserted by the State.' We follow the same course in the present case."

Obviously these tribunals consider the question still an open and undecided one.

The plaintiff contends that Section 601(b) authorizes its suit against the State and cities in support thereof the *Atkins* case and the prior Fifth Circuit decisions of *United States* v. *Lynd*,[20] and *United States* v. *Dogan*.[21]

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[17] See also Peay v. Cox, 190 F.2d 123, 125, certiorari denied, 324 U.S. 896, a voting case which came up from Mississippi.

[18] 362 U.S. 602.

[19] 323 F.2d 733.

[20] 301 F.2d 818.

[21] 314 F.2d 767.

Since it is clear from *United States* v. *Alabama*, Note 18, supra, and *United States* v. *Atkins*, Note 19, supra, that neither the Supreme Court nor the Court of the Fifth Circuit considers that the constitutionality of § 601(b) has [fol. 3056] been passed upon and that both courts consider the question open, it is desirable to pause here to demonstrate that neither *Lynd* nor *Dogan* passed upon the constitutionality of the statute in any legal way.

The hasty and confused handling of the two *Lynd* cases by the Court of Appeals for the Fifth Circuit leaves the "whole voyage of their life bound in shallows and in miseries." Perhaps an effort at unscrambling them may be measurably fruitful.

The first case commenced against Lynd—but the second case decided—was brought under Title II, civil Rights Act, 1960, 42 U.S.C. § 1974d, and involved an effort by Kennedy to examine and copy his records.[22]

This case, No. 1604, in some way found its way to the Court of Appeals and was decided by a panel composed of Judges Rives, Brown and Wisdom, the opinion by Judge Brown. See *Kennedy* v. *Lynd*, 306 F.2d 222. The opinion covered several other cases from the State of Louisiana and is specifically dealt with beginning at page 227 under the heading "No. 19636, Lynd, Registrar Forrest County, Mississippi." It was there that the dictum was first expressed that "Relief under § 1971(c) is not confined to named individual voter officials but extends as far as the sovereign State itself." The opinion purports to lay down a broad sweep of general rules governing the right of the United States to examine and copy records.

[fol. 3057] It is plain that the above quoted statement from page 228 of the Report is wholly without basis.

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[22] Civil Action No. 1604, Hattiesburg Division, Southern District of Mississippi, commenced January 19, 1961, decided by the District Court January 15, 1962, which court entered an order adjudicating that "Case No. 1604 [is] abandoned and effectually non-existent," and the case was passed to the files. The reason assigned was that the United States had brought a second suit involving the same subject matter.

Neither the United States nor the State of Mississippi was a party to that civil action. The appeal was from the action of the court below in passing the case to the files—certainly a non-appealable action which could be set aside by either party at any time upon a showing that the reason for putting the case on the inactive list was no longer in existence. The decision is bottomed by the author on *United States* v. *Woods*, 5 Cir., 1961, 295 F.2d 772, 777. An examination of that report will reveal that it did not involve any of the questions presented by *Kennedy* v. *Lynd*, and the statement that the sovereign State was within the ambit of the relief accorded by the statutes is without legal basis.

The second case commenced against Lynd—but the first decided—was brought pursuant to 42 U.S.C. § 1971(c) and involved a discrimination suit by the United States against Lynd and the State of Mississippi.[23] In that case, no mention was made anywhere in the pleadings, the brief of either counsel, or the opinion of the Court of Appeals of the question of the constitutionality of § 601(b) of the Civil Rights Act of 1960.

This case had never been decided by the District Court. The State of Mississippi was joined as a party defendant, as permitted by the explicit terms of the Act. The only time we find the State mentioned in the opinion by the Court of Appeals is at page 823, where it rejected the contention that the Court of Appeals should not grant a temporary injunction "because the State has not filed its answer and has not put on its proof."

[fol. 3058] The trial court had ordered the United States to furnish the names of all persons whom it intended to use as witnesses to show discrimination. The Government responded by filing an amended complaint, to which it attached an appendix giving the names of its witnesses. A number of witnesses were called whose names did not appear on the list, and the defendants objected to the testimony as being outside the scope of the pleadings. The

[23] Number 19576, United States v. Lynd et al, begun July 6, 1961 and decided by the Court of Appeals April 10, 1962, 301 F.2d 818.

District Court permitted the United States to amend orally the amended complaint, with the condition, however, that defendants could defer cross-examination of the surprise witnesses for a period of thirty days and could then answer the amended complaint.

The United States rested its case, and the defendants put on their testimony. At the conclusion of the three-day hearing, the District Court ruled, upon application of the defendants, that all questions before it, including motion for preliminary injunction, would be deferred until after the thirty-day period, so that the defendants could prepare to cross-examine the witnesses whose names had been omitted from the list.

The District Court did not enter any order at all, and did not make any findings of fact or conclusions of law, and no notice of appeal was given, as provided by the Federal Rules of Civil Procedure. The United States adopted the expedient of going direct to the Court of Appeals for the Fifth Circuit, there filing a motion for an injunction pending appeal. The case was heard at an emergency hearing in Houston, Texas.

Neither in the District Court nor in the Court of Appeals was the question of the suability of the State of Mississippi mentioned in the briefs and, as stated, the opinion of the Court of Appeals did not mention the existence of such a question. The sole specification of error relied upon by the United States alleged that the District Court erred in [fol. 3059] not granting the temporary injunction prayed for.[24]

It is clear, therefore, that the question of the constitutionality or meaning of § 601(b) never became an issue in either *Lynd* case and was never passed upon by the court in either case. Whatever language the Court of Appeals

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[24] "The District Court erred in refusing to grant the Attorney General's application for an order, pursuant to § 305 of Title III of the Civil Rights Act of 1960 (42 U.S.C. § 1974(d), 74 Stat. 88), requiring the registrar of elections of Forrest County, Mississippi to permit the Attorney General to inspect the voting records of that county."

used in either *Lynd* case, therefore, was pure dictum and established no precedent to guide the action of any court.

Nevertheless, the language misled the author of the opinion in the *Dogan* case,[25] and led to the quoting in *Dogan* of the statement which had been incorrectly made in *Kennedy* v. *Lynd* quoted supra.

The District Court for the Northern District of Mississippi [26] had denied the motion of the United States for a preliminary injunction against Dogan, Sheriff and Tax Collector, in connection with his alleged refusal to permit Negroes to pay their poll taxes. The State of Mississippi was named as party defendant, but the lower court denied any relief against either Dogan or the State. We find no mention in the opinion of Honorable Claude F. Clayton, District Judge,[27] of the question whether any relief should [fol. 3060] be granted against the State of Mississippi. In the original record, however, among the various discussions of evidence between the court and counsel on one or more occasions, that question was adverted to. It is natural that the discussion did not relate to the suability of the state, because nobody made any attack upon the statutory grant of jurisdiction to sue the states. Some objections to testimony were made and the Government contended that the evidence was admissible to show the state's connection with Dogan's actions. Ruling was reserved on the objections, and the Court was never called upon to make its ruling, and did not ever rule on the question.

When the case reached the Court of Appeals, the two specifications of error filed by the United States were these:

> "(1) The District Court erred in refusing to find that distinctions on account of race or color have been made in the collection of poll taxes in Tallahatchie County;
>
> "(2) The District Court erred in excluding evidence

[25] 314 F.2d at 771

[26] 206 F.Supp. 446.

[27] 206 F.Supp. 446.

of racially discriminatory acts occurring prior to the incumbency of Sheriff Everett R. Dogan on December 24, 1959."

No issue was raised before the Court of Appeals, therefore, as to whether relief "extends as far as the sovereign state itself." It is clear, therefore, that the language used by the Court of Appeals in the *Dogan* case (page 771) is dictum and is not authority in any case involving a question similar to the one before us. In fact, Judge Rives, who is the author of *Atkins,* supra,[28] sat as a member of [fol. 3061] the second *Lynd* case and in the Dogan case.[29] And see also the majority and dissenting opinion of that court in No. 20596, *United States* v. *Ramsey,* —— F. 2d ——.

The State of Mississippi further makes the point that any violation of 42 U.S.C. § 1971, which would give rise to a cause of action, would constitute a crime under the provisions of 18 U.S.C. § 242. This would then amount to an interpretation of the statute which would authorize a suit between the sovereign federal government and the sovereign state in a criminal matter. As between sovereigns there is no law or crime. It additionally makes the point that the State cannot create an agency to commit a crime, and therefore no statute by fiat can create such a criminal agency relationship.

The State also contends that the special statutes under which this three-judge Court is convoked (28 U.S.C. % 2281-4) specifically authorize an injunction only "restraining the action of any *officer* of such State in the enforcement or execution" of the statutes charged to be unconstitutional.

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[28] 323 F.2d 733.

[29] The recent three-judge district court in the case of United States v. Louisiana (C.A. 2548E, District Louisiana, Baton Rouge Division, Dec. 27, 1963) was apparently led into the same error in its holding that the State may be joined as a party defendant in a proceeding under 42 U.S.C.A. § 1971. It refers to Lynd and Dogan as authority.

In *Federal Trade Commission* v. *Claire Furnace Co.*,[30] the Supreme Court ruled that no injunction should issue against a party whose only connection with the proceedings was that it could have requested others to take enforcement action, since all defenses available to the party aggrieved could have been presented in the proceeding where [fol. 3062] in enforcement was attempted. In the three-judge district court case of *Massachusetts Farmers Defense Committee* v. *United States*,[31] the court relied upon the *Claire Furnace Company* case and other authorities to support the statement:

> "It is well settled that where a statute or regulation is challenged as being unlawful or unconstitutional, an injunction will lie only against the person or agency who is charged with the enforcement of the statute or regulation."

In *Kresge Co.* v. *Ottinger*, 29 F.2d 762, a special three-judge court, speaking through an opinion by Circuit Judge A. N. Hand, took similar action, as evidenced by the following excerpt from their opinion:

> "Inasmuch as the district attorney of New York county and the board of optometry are nowhere in the statute charged with the enforcement of the act, each bill is dismissed as to them for this reason, as well as for other reasons hereafter stated."

The Federal Court System has always adhered to the rule that constitutional issues are not to be decided except where such constitutional decision is clearly required by the interests of justice. Perhaps the landmark case in support of this proposition is *Ashwander* v. *Tennessee Valley Authority*, 297 U.S. 288. Speaking through Chief Justice Hughes, the Court stated: [P. 324]:

> "The pronouncements, policies, and program of the [fol. 3063] Tennessee Valley Authority and its direc-

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[30] 274 U.S. 160.

[31] 26 F.Supp. 941.

> tors, their motives and desires, did not give rise to a justiciable controversy save as they had fruition in action of a definite and concrete character constituting an actual or threatened interference with the rights of the persons complaining. The judicial power does not extend to the determination of abstract questions . . . . At the last term the court held, in dismissing the bill of the United States against the state of West Virginia, that general allegations that the state challenged the claim of the United States that the rivers in question were navigable, and asserted a right superior to that of the United States to license their use for power production, raised an issue 'too vague and ill-defined to admit of judicial determination.' . . . Claims based merely upon 'assumed potential invasions' of rights are not enough to warrant judicial intervention." [Citations in the original opinion are omitted for brevity.]

The concurring opinion of Mr. Justice Brandeis gives us an outline of the great judicial principls applicable to constitutional adjudications [Pp. 345-348]:

> "The Court has frequently called attention to the 'great gravity and delicacy' of its function in passing upon the validity of an act of Congress and has restricted exercise of this function by rigid insistence that the jurisdiction of federal courts is limited to actual cases and controversies; and that they have no power to give advisory opinions. On this ground it has in recent years ordered the dismissal of several [fol. 3064] suits challenging the constitutionality of important acts of Congress . . .
>
> "The Court developed, for its own governance in the cases confessedly within its jurisdiction, a series of rules under which it has avoided passing upon a large part of all the constitutional questions pressed upon it for decision. They are:
>
> "1. The Court will not pass upon the constitutionality of legislation in a friendly, nonadversary, pro-

ceeding, declining because to decide such questions is legitimate only in the last resort, and as a necessity in the determination of real, earnest, and vital controversy between individuals. It never was the thought that, by means of a friendly suit, a party beaten in the legislature could transfer to the courts an inquiry as to the constitutionality of the legislative act.'

"2. The Court will not 'anticipate a question of constitutional law in advance of the necessity of deciding it.' . . . 'It is not the habit of the court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case.' . . .

"3. The Court will not 'formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.' . . .

"4. The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of. This rule has found most [fol. 3065] varied application. Thus, if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter. . . .

"5. The Court will not pass upon the validity of a statute upon complaint of one who fails to show that he is injured by its operation . . . Among the many applications of this rule, none is more striking than the denial of the right of challenge to one who lacks a personal or property right. Thus, the challenge by a public official interested only in the performance of his official duty will not be entertained. . . .

"6. The Court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits. . . .

"7. 'When the validity of an act of Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction

of the statute is fairly possible by which the question may be avoided.' "[32]

We are of the view that the motion to dismiss filed by the State of Mississippi presents a case where the Court can and should avoid a decision on a question of constitutionality, where as here, the matter may be decided on non-constitutional grounds. As the Fifth Circuit pointed out in [fol. 3066] *United States* v. *Atkins*, supra, it would not be appropriate for it to grant relief against the State where Registrars are in office and are subject to suit and injunctive relief. Nowhere does the Complaint, except by injecting rash conclusions, demonstrate that the State, as such, is enforcing or threatening to enforce the statutes or constitutional provisions under attack. Rather, it is the County Registrars who are defendants who enforce the regulations in question.[33]

Before leaving the question of the suability of the State, it is well to consider the circumstances under which the statute granting the right to sue the State came into being. The United States of America sued the State of Alabama, together with certain registrars who had resigned from the position before the suit was filed. The United States District Court for the Middle District of Alabama dismissed the action holding, among other things, that the sovereign State of Alabama was not subject to suit by the United States in the action involving alleged discrimination in the denial to Negroes of voting rights. *United States of America* v. *State of Alabama et al*, March 6, 1959, 171 F. Supp. 720, 730. It relied on the fact that the Civil Rights Act of 1957 did not specifically grant the right to proceed against the State. The Court there followed the general law as stated in *United States* v. *United Mine Workers of America*, 1947, 330 U.S. 258, in which it was held that sovereign governments were not included within the word "Persons."

The Court of Appeals for the Fifth Circuit affirmed the

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[32] (Again, citations have been omitted for the sake of brevity.) See also Lane v. Wilson, 307 U.S. 68.

[33] See Note 36 infra.

[fol. 3067] decision of the district court, *United States of America* v. *State of Alabama*, June 16, 1959, 267 F.2d 808, stating:

> "Without elaborating upon it, as under the settled law of the cases we could do in extenso, it is sufficient for us to simply say that, under the principle which has been, and still is, controlling upon the federal courts, whatever congress might or could do in providing in a civil rights action for conferring federal court jurisdiction over a state, it has never heretofore done so and it has not in terms done so in the statute invoked here.
>
> "Absent such specific conferring or jurisdiction, a federal court would not, indeed could not assume jurisdiction over a sovereign state without a precedent determination that, though the jurisdiction had not been expressly conferred, the language of the invoked statute carried the necessary, the unavoidable implication that the congress upon the gravest considerations and after the utmost thought and deliberation had intended to and did confer it." (Citing a large number of cases.)

While this action was pending in the Supreme Court upon certiorari, the Congress inserted the words making the state itself conditionally liable under the Civil Rights Act (Act of May 6, 1960, 74 Stat. 86, § 601 (b), 42 U.S.C. § 1971 (c). The Supreme Court, on May 16, 1960, vacated the judgments of the Court of Appeals and the District Court and remanded to the District Court for further hearing, *United States* v. *Alabama*, 362 U.S. 602, 604, using this language:

> [fol. 3068] "Shortly before the case was heard in this Court on May 2, 1960 [being the same day the case was argued before the Supreme Court], Congress passed the Civil Rights Act of 1960. . . . Among other things § 601 (b) of that Act amends 42 U.S.C. § 1971 (c) by expressly authorizing actions such as this to be brought against a State. Under familiar princi-

ples, the case must be decided on the basis of law now controlling, and the provisions of § 601 (b) are applicable to this litigation.

"We hold that by virtue of the provisions of that section the District Court has jurisdiction to entertain this action against the State. In so holding we do not reach, or intimate any view upon, any of the issues decided below, the merits of the controversy, or any defenses, constitutional or otherwise, that may be asserted by the State.

"Accordingly, the judgments of the Court of Appeals and the District Court will be vacated, and the case remanded to the District Court for the Middle District of Alabama with instructions to reinstate the action as to the State of Alabama, and for further proceedings consistent with this opinion."

From these facts it is clear that the statute was passed for a particular purpose, i.e., to fill a vacuum caused by the fact that there were no registrars having jurisdiction over Macon County, Alabama. Under settled priciples of constitutional law, this departure from traditional constitutional principles would be held to apply only to the circumstances and conditions which lay behind the Court's holding. We do not have such a situation here. The registrars [fol. 3069] are all available and full relief can be had against them, and the dismissal of the State from the controversy will be in no wise prejudice the granting of the relief sought.

For the reasons stated we think that the proper course here is to grant the motion of the State to dismiss on the ground that the complaint fails to state a claim against it upon which relief could be granted.

[fol. 3070] VI

The State Board of Election Commissioners is, by statute composed of the Governor, the Secretary of State, and the Attorney General of the State of Mississippi. § 3204, Mississippi Code of 1942, Annotated. The duties of theses Commissioners are comprehensively prescribed and particularized by statute. § 3209.6 Mississippi Code of

1942, Annotated. We have examined the Complaint in detail without finding any fact allegation that these Commissioner Defendants did in any way enforce any of the statutes under attack, nor is any fact allegation made that their actions enforced a denial of registration to any otherwise qualified applicant because of the race or color of the applicant or for any other reason.

No choice is given to the State Election Commission in the selection of County Registrars, that duty arising only in the extreme situation where they have reached the determination that the duly elected Circuit Clerk is an "improper" person. They have no control over the tenure or actions of the Circuit Clerk as Registrar once they have appointed him as required. They are rigidly regulated as to the type of registration forms they must prepare. The statutes make it plain that they are more conduits through which a minor part of the registration process is required by statute to flow. The State Election Commissioners are not charged in the Complaint with promulgating any form or with appointing any Registrar otherwise than in accordance with their duties under the statutes relied upon by Plaintiff. These statues are not under attack in this case. Considering the Complaint and any set of circumstances which could be proved under its allegations, we cannot visualize how an injunction could issue against the State Board of Election Commissioners or any of its members individually, for they are not charged with enforcing or threatening to enforce any of the statutes under attack.[34] [fol. 3071] The presence of the State Election Commissioners as parties-defendant in this litigation nevertheless presents the rights of three additional defendants which must be recognized by way of pleadings, discovery procedures, objections to evidence, cross-examination of witnesses, presentation of evidence, and the many other trial procedures which, while time-consuming, are the due of every litigant under our system of judicial procedure.

Three-Judge courts constitute a unique burden on the

[34] See Federal Trade Commission v. Clarie Furnace Co., supra; Massachusetts Farmers Defense Committee v. United States, supra; and Kreage v. Ottinger, supra.

Federal Judiciary. To keep this burden to a minimum, the statutes vesting the right to call such courts to sit in judgment of constitutional challenges are to be strictly construed as a procedural technicality and not as a broad remedial social policy. See *Phillips* v. *United States*, 312 U.S. 246; *Stainback* v. *Mo Hock Ke Lok Po*, 336 U.S. 368; and *Kesler* v. *Dept. of Public Safety*, 369 U.S. 153.

Where, as here, parties are brought before such a tribunal who are not at all within the contemplation of the statutes attacked and who are not indispensable, necessary of proper parties to the determination of the issues in controversy, they should be dismissed in the interests of sound judicial administration as well as to spare the litigants themselves and the expense and inconvenience of a trial procedure. For these additional reasons, the motion of the State Election Commissioners to dismiss for failure to state any claim upon which relief could be granted should be sustained.[35]

[fol. 3072] VII

We are further of the opinion that the statutes of Mississippi make it plain that the County Registrar alone is charged with the enforcement of the statutes under attack here.[36]

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[35] What is here stated with regard to the State Election Commissioners would apply with equal force to the defendant, State of Mississippi, so long as the actual enforcement officials, the County Registrars, remained in office and subject to suit.

[36] Mississippi Code of 1942, Annotated, § 3212, entitled "Registrar to register voters," states:

> 'The registrar shall register on the registration books of the election district of the residence of such person anyone appearing before him, and being, upon examination, found, in compliance with Section 244 of the Constitution, as amended, and in compliance with Section 241-A of the Constitution of Mississippi to be entitled to be registered as an elector, upon such person taking and subscribing the oath required by

Complaint makes no charge of any conspiracy or any concert of action between any two or more of the individual county registrar defendants.[37] By Plaintiff's own interpretation, the Complaint charges no series of transaction or occurrences but, rather, individual enforcement by the separate Registrar Defendants of the statutes alleged to be unconstitutional and void. We cannot agree with plaintiff's contention that, if several unrelated officials of a State in- [fol. 3073] dependently applied the terms of a statute in the enforcement of their duties of office, all of such applications would constitute a single transaction or occurrence. or a series of transactions or occurences within the meaning of Rule 20(a) of the Federal Rules of Civil Procedure.

In the absence of a carge of joint wrong-doing by the individual defendant registrars, we find no authority to continue the suit against them as a joint cause of action. Each act of registration or failure or refusal to register must, of necessity, take place separately and apart from every other act of registration or non-registration, even within the same county. The Complaint contains no allegation that any such act of registration or failure or refusal to register was a part of any transaction or occurence concerned with similar acts in a separate county. The only nexus is the use of the same registration laws. This is insufficient to support a joint cause of action.

Section 242 of the Constitution of Mississippi; but persons who may be entitled to register under the provisions of Section 251 of the Constitution of Mississippi, who would be otherwise disqualified by reason of age, may take the oath as modified by that circumstance, and the subscription of the oath shall be by the elector writing his name in the proper column in the registration book.

[37] Registration to vote is an individual process of showing qualification or lack of qualification on a case by case basis. It cannot be the subject of class action relief. Reddix v. Lucky, 252 F.2d 930.

[fol. 3074] VIII

If the plaintiff intended by its Complaint to state also a cause of action based upon a pttern and practice of individual racial discrimination by these defendants in the enforcement of the duties of their offices, such causes of action would be justiciable solely before a single district judge.

This Court has venue jurisdiction of the claims asserted against H. K. Whittington, the Registrar of Amite County, and against Wendell R. Holmes, the Registrar of Pike County, both of these defendants being residents of the Jackson Division of the Southern District. We do not agree with plaintiff's effort to consolidate the various counties with the idea that the acts of the several registrars may be pooled in determining whether there has been a pattern or practice under the terms of the statute. Those very terms recognize that each county in Mississippi is a separate unit for registration and must be so treated in every action against the registrar.

IX

The asserted right of plaintiff that the United States can maintain this action against one one or all of the defendants is not sustained by the authorities upon which the plaintiff relies.[38]

§ 2281 deals with three-judge courts, and we need spend no time in further discussion of that statute. The controversy limited, therefore, to whether the Congress could vest [fol. 3075] in the plaintiff the right claimed by it to maintain this particular action and whether § 1971 does, in fact, justify maintenance by the plaintiff of the action it has

[38] The complaint states that the Court has jurisdiction "under 42 U.S.C. § 1971(d), 28 U.S.C. § 1345, and 28 U.S.C. § 2281. Neither party makes any serious argument concerning § 1345, which vests district courts with jurisdiction of all civil actions "commenced by the United States, or by any agency or officer thereof *expressly authorized to sue by act of Congress.*". The controversy revolves around the words in the statute which we have underscored.

brought. It should be borne in mind what is fairly stated in the complaint and the briefs of the plaintiffs and what its attorney categorically stated at the argument—that the sole object of this action is to have the Court declare the attacked sections of Mississippi's Constitution and statutes unconstitutional, and to substitute therefor the alternative suggestions set forth in the complaint; the plaintiff specifically disavowing any desire or purpose to seek any relief based upon discrimination. This is further verified by the four claims stated supra in plaintiff's own language.

It is elementary that all federal jurisdiction is statutory unless the Constitution itself confers it. And the existence of federal jurisdiction must be shown clearly, and it must be denied if there is doubt about the constitutionality of the grant of jurisdiction. In *Screws* v. *United States*, 325 U.S. 91, the court was able to save what would otherwise have been an unconstitutional grant by surrounding the jurisdiction by narrow limitations.

The only claim asserted by plaintiffs which has any show of merit is that this action is maintainable under 42 U.S.C. § 1971(d), which has been quoted supra. That subsection must be considered in the light of the one immediately preceding it: "Whatever, in a proceeding instituted under this subdivision any official of the state or subdivision thereof is alleged to have committed any act or practice constituting a deprivation of any right or privilege secured by subsection (a) of this section . . ." The provision of subsection (a) to which reference is made is in these words: "(a) All citizens of the United States *who are otherwise qualified by* [fol. 3076] *law to vote in any election by the people in any State*, Territory, district county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color," notwithstanding the Constitution, laws, custom or usages of the state.

These words from subsection (a) plainly state that the United States may intervene in aid of any person of color, *provided that person is "otherwise qualified by law* to vote at any election by the people in any state . . ." (Emphasis added.) The meaning of these provisions seems perfectly clear. The United States may institute proceedings for pre-

ventive relief, provided a state officer is threatening or attempting to deny him the right of voting in a federal election; and provided also he has "the qualifications requisite for electors of the most numerous branch of the state legislature." *Then, and only then, could the United States come to the rescue* of one of its citizens whose right to vote was challenged. In that event, the Attorney General was empowered to bring an action for preventive relief.

The complaint here fails to show that those circumstances existed. This action seeks no relief for any citizen who is qualified under the laws of Mississippi to vote for electors of the most numerous branch of Mississippi's legislature. This action seeks solely to have the Court declare unconstitutional most of the most numerous branch of its Legislature. It constitutes a massive scatter-gun attack against the many important provision of Mississippi's Constitution and statutes. There is no intimation that § 1971, as a whole or as to any part of it, vests such a right in the United States itself. § 244 was placed into the organic [fol. 3077] law of Mississippi by its people in convention assembled after the confusion and frustrations of twenty years of the Tragic Era had subsided enough for its citizenship to bring a semblance of order out of chaos. The people themselves, through their elected convention, placed that section in the Constitution.

The other constitutional provisions attacked by the plaintiff entered the Constitution of Mississippi by the direct vote of the people. The symmetrical statutory structure for carrying out the constitutional mandates was worked out and duly passed by the legally constituted legislatures of the state. § 1971 does not invest the United States or its Attorney General with any power to bring any action to destroy any state's constitution or laws.

It is clear that § 1971 contemplated and envisioned the existence of state requirements for voting which did not on their face discriminate because of race or color. The operative language is "all citizens of the United States who are otherwise qualified by law to vote." This presupposes the existence of valid state requirements for voting. There is no provision of the Constitution of a statute of Mississippi which deprives any citizen of the right to vote because of race or color.

It is equally clear that this effort of the United States to invalidate the state voting requirements here involved is outside the scope of the Fifteen Amendment to the Constitution, which has been repeatedly held to be the sole basis of § 1971 (a). *United States* v. *Reese*, 92 U.S. 214, and *Guinn* v. *United States*, 238 U.S. 347.

Guinn involved a constitutional provision of Oklahoma, which set up a registration requirement for voting, but provided that this requirement should not be applied to any person who was, on January 1, 1866, qualified to vote or to [fol. 3078] the lineal descendant of such person. The Supreme Court found this constitutional provision on its face to be in conflict with the Fifteen Amendment, since it was well known that no Negroes were qualified to vote in Oklahoma on January 1, 1866. This brief quotation from the decision in Guinn (238 U.S. 347, at 362) will suffice to demonstrate the attitude of the court then and now:

> "Beyond doubt the amendment does not take away from the state governments in a general sense the power over suffrage which has belonged to those governments from the beginning and without the possession of which power the whole fabric upon which the division of state and national authority under the Constitution and the organization of both governments rest would be without support and both the authority of the nation and the State would fall to the ground. In fact, the very command of the Amendment recognizes the possession of the general power by the State, since the Amendment seeks to regulate its exercise as to a particular subject with which it deals . . . Thus the authority over suffrage which the States possess and the limitation which the Amendment imposes are coordinate and one may not destroy the other without bringing about the destruction of both."

Language of identical import is found in *Reese* (92 U.S. 217-218).

The first sentence of subsection (c) of § 1971 is the one which grants the Attorney General the power to institute [fol. 3079] certain proceedings under certain circumstances: "Whenever any *person* has engaged or there are reasonable grounds to believe that any *person* is about to

engage in any act or practice which would deprive any other person of any rights or privileges secured by subsection (a) or (b) of this section." The plain meaning of that part of subsection (c) is that Congress vested the Attorney General with power to seek injunctive relief against state election officials acting under color of law when said officials should deny a person "otherwise qualified to vote" of the right to vote because of race or color.

Assuming, therefore, that § 1971 does empower the United States, through the Attorney General, to assist legally a person who meets all the other qualifications of Mississippi law, who is being discriminated against because of his color, the statute does not tend to support the action here, which is not based upon discrimination, but upon the asserted fundamental unconstitutionality of the entire structure of Mississippi law providing voter qualifications. Under these circumstances the least this Court can do is to avoid a doubtful constitutional construction and to dismiss the action because it is not brought under any power given by the statute relied on, but is a direct attack by the Indestructible National as such, and is against the Indestructible State as such: And, moreover, it is an attack against a state aimed at destroying its action in a field committed exclusively to it by the Constitution; to-wit, the state's power to determine and define the qualifications of the electors who may vote not only in state elections, but in federal elections as well.

[fol. 3080]

X

Article I, Section 2 of the Constitution provides that representatives shall be "chosen every second year by the People". It further provides that "the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature". These simple words contain the only requisite provided for the selection of those persons who shall vote in federal elections.[39]

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[39] Volume 49, No. 19, 1963, of the American Bar Association Journal contains an excellent article on "Free Elec-

As pointed out by Dr. Ritz, the very simplicity of this language of the Constitution might tend to suggest casualness of draftsmanship. He promptly points out, however, that such was not the case, suggesting that the records of the convention, as discussed in Farrand, show that it was deeply concerned with problems relating to the election of the Federal Government, adopting a plan for the indirect election of the President and Vice President by use of an electoral college. The convention provided: "Each state shall appoint in such manner as the legislature thereof [fol. 3081] may direct, a number of electors . . .", thereby leaving the method of selection and qualifications to the states, although Congress was authorized to establish the time of their choosing.

On May 29, 1787, in presenting the resolutions known as The Virginia Plan, which provided the basic framework of the Constitution, Edmund Randolph proposed a national legislature to consist of two branches, the members of the first to be elected by the people of the several states, and the members of the second to be elected by the first branch from persons nominated by the state legislatures. The national executive was to be elected by the national legislature.[40]

On May 31, sitting as a committee of the whole House, the convention approved the resolution calling for a national legislature to consist of two branches, and then considered and debated the resolution calling for election of

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tions and the Power of Congress Over Voter Qualifications." Therein is reproduced the paper by Dr. Wilfred J. Ritz, Professor of Law, Washington and Lee University, which won first place in the 1962 Samuel Pool Weaver Constitutional Law Essay Competition conducted annually by the American Bar Foundation.

We draw extensively from this paper in this portion of the opinion. Dr. Ritz cited many times from Farrand, "The Records of the Federal Convention of 1787," 4 Vols. (Rev. ed. 1937).

While the article deals alone with the power of Congress, most of its contents apply equally to the Courts.

[40] 1 Farrand 20-21, 27-28.

the first branch by the people, adopting it by a vote of six states to two, with two states divided.[41]

A few days later the convention reconsidered and again upheld popular election, this time by a vote of eight states to three.[42]

[fol. 3082] During consideration of The New Jersey Plan, still another attack on popular election was narrowly defeated, then another motion to reconsider was voted down by six states to four, with one divided.[43]

As Dr. Ritz points out, on page 950 of the A.B.A. Journal for October, 1963, various aspects of the provision were debated with care until, finally, the provision was passed without any state dissenting. The debate on the qualification of voters was thus ended. On August 9th, the convention granted to Congress the power to supersede state regulations *as to the time, place and manner of holding elections*. The debate shows that it was pointed out that the provision *had nothing to do with voter qualifications*.[44]

On September 8th, the convention named a committee of style, which made only one change which was adopted by the convention denying Congress any power over the place of election of senators. The provisions relating to elections were adopted and bacame part of the completed Constitution.[45]

The article further points out that the Seventeenth Amendment ratified in 1913, providing for the popular election of senators, follows the pattern set forth in the original Constitution by providing that the electors in [fol. 3083] each state shall "have the qualifications requisite for electors of the most numerous branch of the state legislatures".[46]

It further states that, except for the Fifteenth and Nineteenth Amendments, which place restrictions on the quali-

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[41] 1 Farrand, 46, 47-50, 54-55, 46, 60.

[42] 1. Farrand 118, 124, 130, 132-138, 140-141, 142-144, 145, 147.

[43] 1 Farrand, 353, 358-360, 364-365, 367, 368.

[44] 2 Farrand 229, 239-242, 244.

[45] 2 Farrand 651, 653.

[46] Vol. 49, No. 10, A.B.A.J. page 951.

fications the states may require of electors for state officials and so, indirectly, become limitations on the qualifications as defined in the original Constitution, "Otherwise, there are no constitutional restrictions on the qualifications the states may require of electors for state officials, and so also of electors of federal officials.[47]

The article refers also to the "Poll Tax Amendment," emphasizing that it departed from the pattern of previous amendments in that a state is permitted to establish a different qualification for electors to the most numerous branch of its own state legislature than the state can establish for the election of federal officials. But the elimination of that qualification could be done by constitutional amendment alone.

It is clear, therefore, that in the ratification of the Seventeenth Amendment and of the Poll Tax Amendment, the Congress of the nation and the people have affirmed in this century that the power to establish or change the qualifications of electors for federal officials can be ac- [fol. 3084] complished by constitutional amendment alone.

Dr. Ritz' estimate of the constitutional scheme for establishing the qualifications of electors for federal officials is thus stated at the conclusion of his article:[48]

> ". . . For this reason, the Constitution establishes the qualifications of electors for federal officials by a readily ascertainable and completely objective standard. This objective standard is beyond the power of the Federal Government to change, except by going to the states and the people to seek a change through the process of constitutional amendment. History demonstrates that when a change has been needed, the necessary constitutional amendments have been forthcoming. . . ."

The decisions of the Supreme Court teach a similar lesson. *Slaughterhouse Cases,* 83 U.S. 36; *Minor* v. *Happersett,* 88 U.S. 162; *United States* v. *Reese,* supra; *United States* v. *Cruickshank,* 92 U.S. 542; *Ex Parte Yarbrough,*

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[47] Id.

[48] 49 A.B.A.J., No. 10, page 954.

110 U.S. 651; *Swafford* v. *Templeton*, 185 U.S. 487; *Guinn* v. *United States*, 238 U.S. 347; *Newberry* v. *United States*, 256 U.S. 232; *Breedlove* v. *Suttles*, 302 U.S. 277; *Lassiter* v. *Northampton Board of Election*, supra.

XI

At the risk of tedium, we feel that we ought to discuss briefly the provisions of Mississippi's Constitution and statutes which plaintiff could strike down. We find each of them to be within the power of the State and to be reasonable and valid. For convenience, we copy at this point in [fol. 3085] the margin the language of §§ 244 and 241(a) of the Constitution.[49] Attack is made also upon sixteen

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[49] "Section 244. Every elector shall, in addition to the foregoing qualifications be able to read and write any section of the Constitution of this State and give a reasonable interpretation thereof to the county registrar. He shall demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government.

"The person applying to register shall make a sworn, written application for registration on a form to be prescribed by the state board of election commissioners, exhibiting therein the essential facts and qualifications necessary to show that he is entitled to register and vote, said application to be entirely written, dated and signed by the applicant in the presence of the county registrar, without assistance or suggestion from any person or memorandum whatever; provided, however, that if the applicant is unable to write his application by reason of physical disability, the same, upon his oath of such disability, shall be written at his unassisted dictation by the county registrar.

"Any new or additional qualifications herein imposed shall not be required of any person who was a duly registered and qualified elector of this state prior to January 1, 1954.

"The Legislature shall have the power to enforce the provisions of this section by appropriate legislation."

"Section 241-A. In addition to all other qualifications

statutory enactments published in the Mississippi Code of 1942. We will not copy or refer to those at this point beyond this mention of them, but will bring forward the gist of the statutes as they are discussed.

[fol. 3086] It is appropriate at the outset of this portion of the opinion to set forth the basic principles which have guided the court in reviewing questions presented by the motion to dismiss:

> "The cardinal principle of statutory construction is to save and not destroy . . . as between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that which will save the act. Even to avoid a serious doubt the rule is the same." [50]

Courts should consistently seek an interpretation of a statute which supports constitutionality and avoid, where possible, holding that the statute is vague or indefinite.[51]

When the terms of a statute are unambiguous the court may not, in construing it, speculate on probabilities of the intention of Congress.[52] The legislative history of an unambiguous statute is immaterial.[53]

> [fol. 3087] "The plain words and meaning of a statute cannot be overcome by a legislative history which, through strained process of deduction from events of

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required of a person to become entitled to register for the purpose of becoming a qualified elector, such person shall be of good moral character.

"The Legislature shall have the power to enforce the provisions of this section by appropriate legislation."

[50] National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U.S. 1, 30.

[51] United States v. National Dairy Products Corp., et al, 372 U.S. 29.

[52] Merchants Insurance Co. v. Ritchie, 5 Wall. 541.

[53] United States v. McKesson & Robbins, Inc., 351 U.S. 305; United States v. Oregon, 366 U.S. 634.

> wholly ambiguous significance, may furnish dubious bases for inference in every direction." [54]

With these principles in mind we have examined the provisions of the constitutional and statutory sections here challenged to determine if they are ambiguous or uncertain. We find them to be plain, simple and straight-forward. Their meanings and intention are transparent and completely unambiguous. We have, therefore, determined that their constitutional status cannot be changed by delving into supposed legislative intent, history or purpose.

It is likewise true that the method of application or administration of the statutes cannot affect the validity or invalidity of the statutes themselves. In *Giles* v. *Harris*, 189 U.S. 475 at 487, the Supreme Court stated:

> "If the sections of the constitution concerning registration were illegal in their inception, it would be a new doctrine in constitutional law that the original invalidity could be cured by an administration which defeated their intent."

The reverse effect has also been negated:

> [fol. 3088] "A statute may not be held void because of the action of an executive officer in applying its provisions. Even when there is an abuse of executive power against which the courts cannot relieve because of their inability to control administrative discretion, the act of Congress under which the action is taken is not rendered invalid any more than it is by action which is absolutely unauthorized." [55]

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[54] Gemsco, Inc. v. Walling, 3 - - U.S. 244, at 260. Cf. Davis v. Schnell, 81 F. Supp. — 72, 878:

> "*When a word or phrase in a statute or constitution is ambiguous,* it is the duty of the court, in construing the meaning of the word or phrase, to attempt to determine whether an exact meaning was intended and if so to ascertain what meaning." (Emphasis added.)

[55] Duke Power Co. v. Greenwood County, 91 F.2d 665, 672; Affirmed 302 U.S. 485.

Indeed, any other method of statutory interpretation would permit members of the Executive Branch, at will, to make or unmake legislative enactments. We do not hold that arbitrary or discriminatory administration of a law which is valid on its face will not give rise to a right of action against the offending enforcement official; rather we limit our holding to the determination that such administration cannot change the constitutional status of the law on its face.

XII

The analysis of the Complaint required by the motions before us should properly begin with a consideration of the validity of Section 244 of the Mississippi Constitution. This same section in its present form was before this Court in *Darby* v. *Daniel*, 1958, 187 F. Supp. 170, from which no appeal was taken. We could very well fashion our opinion at this point by literally rescripting Sections I and II from this opinion, but such a procedure would be needlessly [fol. 3089] prolix. Suffice is to say that we adopt those two sections as our opinion here upholding the constitutionality of Section 244 on its face.[56] The authorities there cited are still completely valid support for the points made. The fact that plaintiff there was required to follow the administrative remedies available to him does not detract from the logic or correctness of the court's constitutional holding, which we approve as controlling the identical questions here presented.

Since the date of the *Darby* decision, the Supreme Court of the United States has again placed its stamp of constitutional approval on the use of a literacy test as a permissible voter qualification requirement. *Lassiter* v. *Northampton County Board of Elections*, 360 U.S. 45. The court there stated:

> "The ability to read and write likewise has some relation to standards designed to promote intelligent use of the ballot. Literacy and illiteracy are neutral on race, creed, color, and sex, as reports around the world show. Literacy and intelligence are obviously

[56] Except for Subsection 4 of Section II, relating to newspaper exhibits, because that question is not before us here.

not synonymous. Illiterate people may be intelligent voters. Yet in our society where newspapers, periodicals, books, and other printed matter canvass and debate campaign issues, a State might conclude that only those who are literate should exercise the fran- [fol. 3090] chise. Cf. Franklin v. Harper, 205 Ga. 779, 55 S.E.2d 221, appeal dismissed 339 U.S. 946, 70 S.Ct. 804, 94 L.Ed. 1361. It was said last century in Massachusetts that a literacy test was designed to insure an 'independent and intelligent' exercise of the right of suffrage. Stone v. Smith, 1959 Mass. 413-414, 34 N.E. 521. North Carolina agrees. We do not sit in judgment on the wisdom of that policy. We cannot say, however, that it is not an allowable one measured by constitutional standards.[57]

In *Trudeau* v. *Barnes*, 65 F.2d 563, certiorari denied 290 U.S. 659, the Court of Appeals for the Fifth Circuit approved Louisiana's constitutional requirement embracing reading and interpreting its Constitution and that of the United States. However, on November 27, 1963, in the case of *United States* v. *State of Louisiana*, supra, a two-judge majority of a three-judge District Court panel hearing that case held that the *Trudeau* case no longer valid in the light of the decision in *Davis* v. *Schnell*, supra, and "the more recent cases." They also pointed out that the *Trudeau* court, perhaps because of the poor presentation of the case, did not have the "benefit" of evidence of discriminatory purpose and proof of "discriminatory affect" of the Louisiana interpretation test. We think this citation is invalad especially in view of the Supreme Court's hold- [fol. 3091] ing in *Lassiter*.

We note, moreover, these differences between *United States* v. *Louisiana* and the case here presented, it being there contended:

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[57] In Note 7 appearing at 360 U.S. 52, the court pointed out that 19 states have some sort of literacy requirement as a prerequisite to voter eligibility. Mississippi's requirements are among those fully described without adverse comment or observation.

1. The Louisiana Board of Registration has the power to remove *at will* any parish registrar of voters;

2. The parish registrar's whim alone determines who will be tested and who will be registered without testing;

3. No written records were made in most test cases, thus precluding the use of such records for check or review purposes;

4. The Louisiana Registrar is vested with "raw power;"

5. The test prescribed by Louisiana's law has no rational relation to a legitimate governmental objective; it vests unrestrained discretion in the Registrar; it is subjective, unreasonable and is *incapable* of equal enforcement.

Their opinion equates the Louisiana constitutional provision with Alabama's Boswell Amendment, which was condemned in *Schnell* v. *Davis*, 336 U.S. 933. For the reasons set out in *Darby* and because of the legal and factual differences noted above, we cannot agree that Mississippi's Section 244 presents the same questions.

The Louisiana three-judge opinion also places much emphasis on its conception of the difference between "literacy" and "understand" and "interpretation". The latter two phases are said to be words without definite meaning in the law and unlike the words "read" and "write". We cannot agree with the court's observations there. First of all, it seems clear to us that, when the Supreme Court stated "Literacy and intelligence are obviously not synonymous" in its opinion [fol. 3092] in Lassiter quoted above, it did not mean that tests which require a showing of comprehension, understanding on interpretation are not literacy tests. Rather, we believe the court there meant to demonstrate logically that an illiterate person could be intelligent, but that literacy was nevertheless a permissible standard for states to require of prospective electors. The dictionary defines the adjective "literate" as "instructed in letters; educated: specifically, able to read and write." It defines the noun "literate" as "one who can read and write." The transitive verb "read" is thus defined: "to go over, *especially, with apprehensive of the meaning of*, as characters or words; to take in the sense of, as of language, by interpreting the characters with which it is expressed. To utter aloud or render something written, especially so as to

give an interpretation of its significance. To interpret; to discover the meaning of." The transitive verb "read" is defined: " to persue or to go over *with understanding.*" (Emphasis added.)

Literacy must necessarily include understanding if it is to be the meaningful requirement of voter qualification which the Supreme Court discussed in *Lassiter*. If literacy encompassed only the ability orally to pronounce the syllables of a grouping of letters, without a corresponding understanding or comprehension of their meaning, it would signify nothing. A person might look at a book or letter written in Spanish or French and have the ability to write off the words found there and to pronounce them orally, but if he knows nothing of the meaning or thought conveyed by those words, he cannot be said to be literate in Spanish or French. This reasoning draws added support by [fol. 3093] reference to 42 U.S.C. § 1971. In subsection (e) thereof the Congress recognized literacy *and* understanding as valid voter qualification requirements in two separate places in their directions to court appointed voting referees.[58]

The lack of an effective review procedure is another significant difference between the Louisiana case and Mississippi's Section 244. In Section IV of the opinion in *Darby*, the court discussed in detail the machinery which Mississippi had at that time provided for reviewing decisions of the Registrar.[59] Since the *Darby* decision, the only change

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[58] "Where proof of literacy or an understanding of other subjects is required by valid provisions of State law, the answer of the applicant, if written, shall be included in such report to the court; if oral, it shall be taken down stenographically and a transcription included in such report to the court."

"The applicant's literacy and understanding of other subjects shall be determined solely on the basis of answers included in the report of the voting referee."

[59] A review procedure which the Court of Appeals of the Fifth Circuit, in Peay v. Cox, supra, characterized thus:

> "The remedy is wholly administrative, simple, and cheap and ought to be exhausted plainly."

in the review procedure has been to require the County Election Commissioners to consider both oral and documentary evidence. The statute still provides that the hearing is de novo. As we pointed out in *Darby*, "The heart of Mississippi's [registration] machinery lies in the right of any person to appeal to the County Election Commission." [fol. 3094] We would call particular attention to the fact that the words of 42 U.S.C. § 1971(d) permitting recourse to this Court, without regard to whether the party aggrieved shall have *exhausted* administrative or other remedies, were also before the Court in *Darby*. Nowhere does the Bill of Complaint before us allege or aver that anyone who claims to have been denied the right to register even *began* the "simple," "cheap," administrative remedy open under Mississippi law, let alone pursued it or exhausted it.

For all of these reasons, we distinguish the case of *United States* v. *Louisiana*, supra, from the situation presented by the Complaint now before this Court. To the extent that its holdings may conflict with those here, we do not follow it.

Section 244 should be appraised in yet another way, as suggested by the Supreme Court in *Yick Wo* v. *Hopkins*, Sheriff, 118 U.S. 356. In that case, the court suggested a simple but effective test to determine if a statute or ordinance vests arbitrary power in the officer charged with its enforcement and administration. This test is as follows:

> [In that case, persons who wish to operate laundries in wooden buildings were required to obtain the consent of the Board of Supervisors.]
>
> "... if an applicant for such consent, being in every way a competent and qualified person, and having complied with every reasonable condition demanded by any public interest, should, failing to obtain the requisite consent of the supervisors for the prosecution of his business, apply for redress by the judicial process of *mandamus* to require the supervisors to con- [fol. 3095] sider and act upon his case, it would be a sufficient answer for them to say that the law had conferred upon them authority to withhold their assent, without reason and without responsibility."

Because of the result of the test, the court held the statute there under consideration to be purely arbitrary.[60]

For sake of comparison, we call attention to the situation presented in *Schnell* v. *Davis*, supra, and the Boswell Amendment and its implementing statute requiring an applicant for voter registration to establish to the satisfaction of the Registrar that he or she was qualified. If we apply the mandamus test suggested by *Yick Wo*, we would have this situation: a fully qualified applicant request the court to mandamus the Registrar to place his name on the rolls. The Registrar could persist in his denial and resist the mandamus action by simply stating that he was not satisfied with the applicant's attempt to establish to him that he or she was qualified. This would be a complete answer to the mandamus proceeding without reason given and without further responsibility on the Registrar's part.

Under the provisions of Mississippi's Section 244, the situation is just the reverse. Here, if a qualified applicant [fol. 3096] has made a reasonable interpretation and been refused registration by either the Registrar or the County Election Commission, a mandamus action would most surely result in a requirement that the applicant be registered, because the question before the court would be: did the applicant give a reasonable interpretation?

Seeing no reason to depart from our opinion in *Darby* v. *Daniel*, we hold that Section 244 of the Mississippi Constitution is valid on its face and does not violate the Constitution or Laws of the United States.

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[60] This opinion has proven confusing to a number of courts, as evidenced by their varied descriptions of its holding. A careful reading of the opinion discloses that the Supreme Court *did not* hold the municipal ordinance unconstitutional. They did order Yick Wo released and the criminal charge against him dismissed, but the basis for their ruling was because the arbitrary statute was found to have been applied by the Board of Supervisors in an unconstitutional manner.

[fol. 3097]

XIII

The Complaint next charges that Section 241-A of the Mississippi Constitution violates the Constitution of the United States. Good moral character is a prerequisite for admission to practice before the Supreme Court of the United States,[61] the Court of Claims of the United States, and [62] United States Custom Court,[63] and each of the ten circuit Court of Appeals.[64] Good moral character is a prerequisite for naturalization.[65] Connecticut,[66] Alabama,[67] Georgia,[68] and Louisiana[69] all require a prospective elector [fol. 3098] to be of good moral character or good character. In *Atkins*, supra, 323 F. 2d 733, the Court of Appeals for the Fifth Circuit approved the Alabama requirement of good moral character upon condition that a proper

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[61] Rule 5.

[62] Rule 77.

[63] Rule 10.

[64] This variously appears in Rules 6, 7 or 8 of each of the Circuits except for the Fifth. In this Circuit, admission to practice before a District Court is required, and since this Mississippi district requires admission to the State Courts of Mississippi, this requirement is imported into the rules of the Fifth Circuit, at least for Mississippi practitioners in the Southern District,

[65] 8 U.S.C. § 1101, § 1427. It should be noted that although § 1101 sets out several criteria for determination of good moral character, it concludes with the statement: "The fact than any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character."

[66] Chapter 143, Section 9-12, Gen. Statutes of Conn., Rev. 1958.

[67] Constitution, Section 180, Article 8, Constitution of 1901.

[68] Constitution, Section 2-704 (6398) Paragraph IV. (This is one of the alternative provisions for those who cannot read and write.)

[69] Constitution, Article VIII, Section I(c). See also La. Revised Statutes, Vol. 14, Ch. 1, Title 18, Section 31.

written examination is provided. The Mississippi statutes outlined supra provide very stringent requirements for such a hearing as to moral character. § 3217-01 through § 3217-14.

Mississippi presently requires good moral character of:

Taxicab Operators	§ 3495
Incorporators of Banks	§ 5156
Bank Examiners	§ 5164
Architects	§ 8632-09
Attorneys	§ 8654
Barbers	§ 8725
Dentists	§ 8755
Embalmers	§ 8782
Nurses	§ 8816
Optometrists	§ 8840
Pharmacists	§ 8848
Physicians	§ 8879
Podiatrists	§ 8896
Accountants	§ 8905
Veterinarians	§ 8914-07.[70]

Counsel have pointed out in argument that a majority of states require good moral character of applicants for licenses as architects, attorneys, barbers, engineers, medical doctors, undertakers and embalmers, pharmacists, real estate salesmen, veterinarians and public accountants. These are but a few examples of the wide use that the term [fol. 3099] has found in statutory situations where legislative bodies sought to extend privileges to those citizens whom it thought worthy of confidence and trust. We mention these instances to demonstrate that good moral character has found widespread acceptance as a concise and meaningful description of an attribute of a desirable citizen. It seems to us to be self-defining. Any attempt by the legislature to have written a definition applicable to all applicants for voter registration or for any of the licenses mentioned would undoubtedly have ended in a cumbersome, wordy enactment which could have added nothing to the

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[70] All references are to sections of the Mississippi Code of 1942, Annotated.

inherent meaning of the words themselves and might well have detracted from their efficient and effective application.[71]

Requiring that applicants for registration as qualified electors be of good moral character is reasonable and is patently not discriminatory on the basis of race. We note that there is no allegation or charge that Negroes have bad moral character as a racial trait, even though such an allegation would not per se invalidate the enactment.[72] It does discriminate—but in a way that is in nowise unconstitutional. It bars those of bad moral character of every race from becoming voters. While it is beyond this Court's prerogative to commend the enactment of such a measure, we do have authority to say that such an enactment is entirely within the constitutional competence of the people of the State of Mississippi. It is a regulation calculated [fol. 3100] to improve the quality of the electorate though it might curtail its number. This may justifiably be thought to be a pathway to better government.

The Complaint objects to this requirement on the ground that, since more whites than Negroes are now registered, the greater numerical impact will fall on Negroes. This statistical argument is without legal merit.[73] It also lacks logical merit. The provision applies equally to every *unregistered person* of every race, now and for all time to come. It does not partake of the invalidity detected in *Guinn* v. *United States*, 238 U.S. 347, and *Lane* v. *Wilson*, supra. These cases involved situations where the electorate had by law been *exclusively* white. The new regulations applied practically exclusively to Negroes because the exemption was extended to all registered whites and their posterity in perpetuity. In *Lane* v. *Wilson*, the court frankly discusses the problems of the amendment offered to cure this situa-

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[71] We agree with the court in Raabe v. State, 7 Ohio App. 119, when it stated that the phrase "good moral character" defines itself as accurately as the Legislature could define it by any other terms that it might employ along that line. Cf. Petition of Gani, 86 F. Supp. 683.

[72] Williams v. Mississippi, 170 U.S. 213.

[73] Williams v. Mississippi, supra; and Snowden v. Hughes, supra.

tion solely in terms of the Negro race. The inevitable result of the provisions struck down was a racially discriminatory. It is not so here. This enactment applies to new white and Negro registrants alike.

If statistics of present voter registration as compared to census figures can create a climate that would make an otherwise wholesome and valid enactment void because of race discrimination, then every other requirement governing voting—whether newly enacted or covered with antiquity—would be similarly void on the same statistical [fol. 3101] basis. Each such enactment making *any* requirement for registration would necessarily affect more of one race than the other and thus under plaintiff's theory, be invalid. If the census figures are considered in the same sterile and unrealistic atmosphere, they demonstrate that race discrimination must be most flagrant in the states of the northern and midwestern portion of the nation because few, if any, Negroes can be found there.

Plaintiff contends that the good moral character requirement "facilitates" racial discrimination, but they do not say how, other than objecting to the lack of statutory definition. It seems to us that a legislative definition, which could constitutionally bear more heavily on some of the undesirable racial traits peculiar to the Negro as a racial group, might constitute just such a "facility" instead of avoiding it. It is our view that the words are sufficiently direct and plain to be self-defining.

[fol. 3102] XIV

The Complaint next turns its attack to the statutory law of the State of Mississippi. It alleges that the provisions of the last paragraph of Section 3209.6 (and 3209.7), Mississippi Code of 1942, Annotated, are unconstitutional and void as being in conflict with an contrary to the requirements of Title III of the Civil Rights Act of 1960.[74] The provisions of this Act require election officers to retain certain voting records for a period of twenty-two months. The Mississippi statutes provide that, in cases where there is no appeal pending and where a particular application has

[74] 42 U.S.C. § 1971-1974e.

been waived or abandoned, "the registrar is *not required* to retain or preserve any records made under the provisions hereof."

If this statute were to be construed as requiring registrars to destroy records under the circumstances named, it would at most be in conflict with the Federal Statute (42 U.S.C. § 1974). It does not do so. The words "not required to retain" should not be interpreted to mean "permitted to destroy." With this construction the State statutes do not in any way conflict with the Federal enactment. If a registrar does not comply with the provisions of Title III, he cannot justify his noncompliance on the basis of any compulsion derived from the Mississippi Act. It must be construed as permissive only, since it is readily susceptible of that construction. In fact, we cannot see that it is susceptible of any other reasonable construction. [fol. 3103] These concluding paragraphs of Sections 3209.6 and 3209.7 are constitutional.

Section 3213 of the Mississippi Code of 1942[75] makes it mandatory that an applicant complete all blank spaces in the application form "properly and responsively" and sign the same, together with the required oath.

Section 3212.5 of the Mississippi Code of 1942[76] requires a registrar to endorse the word "passed" on the application form of qualified applicants, makes it the responsibility of the applicant to make inquiry to determine whether he or she has passed, and provides for the endorsement of the words "failed" or "not of good moral character" to be endorsed on unsuccessful application forms.

It is charged that these two sections "facilitate" racial discrimination by establishing formal, technical or inconsequential errors or ommissions as grounds for disqualification. We do not agree. The registrar is required by the statutes to make this endorsement on all forms of all applicants without regard to race. The statute also makes it the responsibility of all applicants to make inquiry to determine the status of their application. Again, these challenges are unaccompanied by a fact allegation that the statutes are directed against a racial trait. The proper and

[75] House Bill No. 900, 1962 Session.

[76] House Bill No. 903, 1962 Session.

responsive completion by an applicant of a form is neutral on race, creed and color. The required endorsements can- [fol. 3104] not, in our opinion, constitute any facilitation of racial discrimination. If anything, they would hinder it by requiring a more complete record of the action taken by the registrar, which would be available in the event of a challenge to this action.

Another ground of invalidity involves the numerical effect of the statutes. We have previously discussed and rejected this ground as a vehicle by which unconstitutional deprivation may be established in connection with our discussion of the good moral character requirements of Section 241-A of the Constitution. We adhere to those same views here.

It is next contended that these statutes convert the application form into a hypothetical and unreasonable examination which constitutes an arbitrary restriction on the exercise of the "right to vote." It may be thought unnecessary to reiterate here the status of the Federal and State sovereignties in relationship to the right of suffrage, but it appears to us to be a matter of sufficient moment to warrant indulgence.

In *Minor* v. *Happersett*, 88 U.S. 162, the Court pointed out:

> "For nearly ninety years the people have acted upon the idea that the Constitution, when it conferred citizenship, did not necessarily confer the right of suffrage."

In the case of *United States* v. *Reese*, 92 U.S. 214, the court stated:

> "The Fifteenth Amendment does not confer the right of suffrage upon anyone."

In *McPherson* v. *Blacker*, 146 U.S. 1, it was stated:

> [fol. 3105] "The right to vote intended to be protected refers to the right to vote as established by the laws and constitution of the State."

In *Pope* v. *Williams*, 193 U.S. 621, the court stated:

> "The privilege to vote in any State is not given by the Federal Constitution, or by any of its amendments. It is not a privilege springing from citizenship of the United States . . . In other words, the privilege to vote in a State is within the jurisdiction of the State itself, to be exercised as the State may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals in violation of the Federal Constitution."

As recently as *Lassiter* v. *Northampton County Board of Election Commission*, supra, the court stated:

> "The states have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised."

We assume that the State of Mississippi must believe that the information required on its voter application forms is proper and necessary information to determine the qualified status of the applicant under its requirements. If it did not so believe, then the information should not be requested; but, believing it to be required, it seems to us that it is completely within its prerogative to demand that the form be properly and responsively completed and that the registrar make a full written record of his actions thereon. If it is an exacting examination, which we do not determine it to be, it is one which the statute requires to be administered without regard to race, creed or color. It is beyond [fol. 3106] the jurisdiction of this court to question.

We do not find that these statutes vest unlimited discretion or arbitrary power in the registrar. The words "properly" and "responsively" indicate to this Court a definite enough standard for intelligent and consistent application. The completion of the oath and signature also appear to be normal requirements on their face. No tricky application from is alleged or exhibited. If it does, in fact, operate to "trip" applicants into a disqualifying omission, it again operates indiscriminately of race or color. Even if we thought it were an unwise requirement, we cannot for that reason alone find it to be unconstitutional. After a

careful review of the statutes themselves in the light of all objections made, we are of the opinion that Section 3213 and Section 3212.5 of the Mississippi Code of 1942 are constitutional.

The next attack is made upon Section 3212.7 of the Mississippi Code of 1942 [77] and Section 3217-01 through 3217-13 of the Mississippi Code of 1942 [78] Section 3212.7 requires the registrar to publish the name and address of every applicant for registration to vote, for two consecutive weeks. The cost of such publication to be paid out of the general fund of the county. Fourteen days after the date of the last publication must be allowed by the registrar for challenge by any qualified elector of the county. After this period the registrar is required to proceed to determine the applicant's qualifications.

Sections 3217-01 through 3217-13 prescribe the procedure for challenges and hearings concerning any challenges made.

[fol. 3107] These two statutes are alleged to be unconstitutional because they vest power and authority in white citizens to harass Negroes. Even so, it is likewise that the statutes vest power and authority in Negro citizens to harass whites, in Negro citizens to harass Negroes, and in white citizens to harass whites. The choice as to whether to exercise the power conferred or not is one of purely private decision not subject to the mandates of the Fourteenth or Fifteen Amendments. With regard to the contention that no objective standard is provided to limit the grounds of challenge, we disagree. The grounds are limited to the good moral character of the applicant and other requirements which the applicant must meet in order to be qualified to register to vote.

The challenge is made that the requirements are onerous, arbitrary and unreasonable. These challenges are directed to the legislature's wisdom in the enactment of the statute and not to any permissible grounds of constitutional objection. We do not see in the grant of authority to the registrar to take the matter of a challenge under advisement

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[77] House Bill No. 822, 1962 Session.

[78] House Bill No. 904, 1962 Session.

any unlimited power to forestall registration on a racial basis. Surely the statute contemplates and must be interpreted to require reasonable action on the part of the administrative officer in the discharge of the duties conferred upon him under the authorities previously mentioned.[79] We cannot presume that he will not correctly and impartially render each citizen his due.

Here again we have statutes whose wisdom we are not free to debate. The State of Mississippi could certainly feel that each community should be advised of the names and addresses of its members who seek the exercise of the [fol. 3108] franchise to control its political fate. It is certainly within the state's power to determine that additional solemnity and formality should be added to the act of application for registration. We are unable to say that the requirements of these statutes bear no reasonable relationship to a legitimate state interest. We, therefore, hold Section 3212.7 and Sections 3217-01 through 3217-13 to be valid and constitutional.

The Complaint might also be interpreted to challenge Section 3232 of the Mississippi Code of 1942[80] and Section 3209.6 of the Mississippi Code of 1942. Section 3232 was amended so as to eliminate the requirement for designation of the race of voters in county poll books. Section 3209.6, in addition to permitting destruction of records, was amended so as to make provision for the application form to contain a demonstration of good moral character.

In view of our ruling on the constitutionality of Section 241-A requiring good moral character as a prerequisite to registration, we deem it unnecessary to discuss further the contentions of the Complaint as to the last Code section. As to the section requiring the elimination of the designation of race from the poll books, we could state categorically that the new statute is constitutional, but it would be further pertinent to observe that this appears to the Court to be a situation where the state could be thought to be on the "horns of a dilemma." If it left the designation of race a part of its requirements, it would be subject to criticism

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[79] Cf. Snowden v. Hughes, supra.

[80] House Bill No. 901, 1962 Session.

for making a record of race where the race of the elector was immaterial. Now, having acted to remove reference to race, it finds itself criticized for having done so.

[fol. 3109] The Supreme Court, this term, held that a state statute [81] requiring that, in all primary, general or special elections, the nomination papers and ballots shall designate the race of candidates for elective office, violates the equal protection and due process clause of the Fourteenth Amendment or the Fifteenth Amendment to the Constitution of the United States.[82]

We hold Section 3232 and Section 3209.6 to be valid and constitutional.

In all of these statutory areas, we believe the question of validity must turn on a determination of the power of the state not its supposed secret intentions or presumed improper motives. In the light of our comments above, we believe that it would be no more fitting to inquire into the motive or object of the legislature than it would be to permit such an inquiry to be made as to the motives of the judges of a court for making a decision, or the executive branch for taking or withholding executive action in any given situation.[83] As Mr. Justice Black cautioned in the case of *Everson* v. *Board of Education of Ewing Township*, 330 U. S. 1:

> "But we must not strike that state statute down if it is within the state's constitutional power even though [fol. 3110] it approaches the verge of that power. See Commonwealth of Massachusetts, Holmes, J., supra, 207 U.S. at 85, 88, 28 S.Ct. 26, 27, 28."

And see the discussion of this question in *Darby*, supra, 168 F. Supp, at pp. 176, et seq., and in *Palmer* v. *Ohio*, 248 U.S. 32; *Beers* v. *Arkansas*, 20 Howard 527; *Railroad Co.*

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[81] Louisiana Revised Statutes (1960 Supp.) § 18:1174.1.

[82] Anderson v. Martin, Jan. 13, 1964, —— U.S. ——.

[83] Fernandez v. Weiner, 326 U.S. 320; Sonzinsky v. United States, 300 U.S. 506. See also the article and cases cited in Footnotes 21-23 of the opinion in Darby v. Daniel, supra.

v. *Tennessee*, 101 U.S. 337; and *Hans* v. *Louisiana*, 134 U.S. 1.

We would hardly feel that a proper sense of proportion was being observed if we did not draw out this already much too long opinion sufficiently to say that those who speak for the United States in this case do not propose to leave Mississippi's Constitution and statutes wholly unrecognized. After having importuned this Court to strike down substantially all which the people and the legislature have written during the tedious, sometimes tragic, years in which they have endeavored to maintain a government of laws, the representatives of this Indestructible Union here pray that this Court set up a substitute system of voting qualifications for Negroes, asking that we

> "7. Order said defendants to register as a voter any Negro applicant for registration who possesses the following qualifications for registering to vote and none of the disqualifications as set forth in the Mississippi Constitution of 1890.
>
> "(a) He is a citizen not less than twenty-one years of age;
>
> "(b) He has been a resident of the state, county and election district for the period prescribed by Mississippi law;
>
> "(c) He is able to read;
>
> "(d) He has not been convicted of any disqualify-[fols. 3111-3112] ing crimes enumerated in the Constitution and laws of Mississippi and is not insane."

The Complaint, as amended, thus fails to state a claim upon which any relief can be granted and should be dismissed with prejudice, and the relief prayed for should be denied. A judgment accordingly, with costs, will be entered.

/s/ Ben F. Cameron, Circuit Judge
/s/ William Harold Cox, District Judge

Judge Brown dissents and will, at a later time file a dissenting opinion.

Judge Cox concurs in the foregoing opinion and reserves the right, at a later date, to file a specially concurring opinion.

[fols. 3113-3123] IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action Number 3312

UNITED STATES OF AMERICA, Plaintiff,

v.

STATE OF MISSISSIPPI, ET AL, Defendants

JUDGEMENT—March 6, 1964

This Cause coming on for hearing and the Court of three judges having heard and considered same upon the motions of the Defendants to dismiss the action for failure to state a claim upon which relief can be granted; it is ordered, adjudged and decreed, upon on the grounds and for the reasons set forth in the opinion this day filed, that said motions to dismiss and each of them be and same hereby granted, and said action is dismissed at the cost of Plaintiff, United States of America.

Ordered, Adjudged and Decreed this 6th day of March, 1964.

Ben F. Cameron, United States Circuit Judge,
Harold Cox, United States District Judge.

From said judgment, Judge Brown dissents.

[fol. 3124] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action Number 3312

UNITED STATES OF AMERICA, Plaintiff,

vs.

STATE OF MISSISSIPPI, ET AL., Defendants

Before CAMERON and BROWN, Circuit Judges, and COX, District Judge.

BROWN, Circuit Judge, Dissenting—filed March 23, 1964.

In the opening bars, the Court [1] sounds the theme of a clash between the indestructible union and the indestructible state. The tone of indestructibility is good. For history tells us that no political institution is indestructible. If it is to survive, it must save itself from destruction. It [fol. 3125] is the peril of destruction which is what this case is all about. For no state, and no nation, can survive if, professing democratic rule of the governed, it flagrantly denies the voting right through racial or class discrimination.

The resulting facts are not in dispute. Mississippi must candidly admit that no more than 5% of its adult Negro citizens are registered to vote. This means that public rule comes from the 67% of white adults who are. The contest is whether this is the result of a discriminatory state "Constitution, laws, customs, or usages" in violation of the Civil Rights Act, 42 USCA §1971(a).

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[1] As discussion of court decisions, opinions, etc., inevitably calls for use of terms, such as "the Court," or "this Court," I refer hereafter to the Court's decision and opinion in the instant case as the majority. Likewise, by the abbreviation "Fifth Circuit," I refer to the United States Court of Appeals for the Fifth Circuit of which Judge Cameron and I are members.

That contest is a big one. It is no little controversy between one or more individual Negro voters and individual Registrars. It is between all Negro adults and the State. Indeed, it is between all citizens of the United States and the State. In that setting, it is fitting that the protagonists appear to be what they really are—the United States and the State of Mississippi. The decisive question is, therefore, whether the United States may maintain this suit and whether it may be maintained against the State of Mississippi. Once that is decided, nearly everything falls into place, or becomes a matter [fol. 3126] of superficial consequence.[2] Once that is established, even the sketchy analysis enforced by time[3] will demonstrate two things. First, in dismissing the complaints for failure to state a claim, F.R.Civ.P. 12(b), the majority ignores settled principles of federal procedure. Second, on application of correct principles the Government's complaint and the supplemental showing by answers to interrogatories is more than adequate to demonstrate that the Government might prevail in whole or substantial part.

Such consideration of the constitutional attacks will also expose the majority's fundamental misconception of the nature of the Government's suit. It is not, as the majority repeatedly emphasizes, one attacking the statutes on their *face*. Nor is it one seeking relief because statutes

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[2] See, for example, dismissal of the State Board of Election Commissioners (the Governor, Secretary of State, Attorney General) majority opinion Part VI; misjoinder of causes of party defendants, Part VII; lack of jurisdiction over person of three registrar defendants, Part VIII; improper venue as to one registrar defendant, Part VIII; or necessity for separate trials as to each registrar to obtain a pattern or practice, finding and remedy, Part VIII.

[3] In publishing its opinion without awaiting time for preparation of this dissent, the majority presumably thought it desirable that this case reach the Supreme Court along with, or at least not too long after, the appeal in United States v. State of Louisiana, D.C.La., 1963, (3-Judge) 225 F.Supp. 353-403. I would agree with this objective.

valid on their face, and valid in fact, are being discriminatorily applied.

[fol. 3127] Discrimination is, to be sure, an important element of the Government's thesis. But the discrimination sought to be proved, both in practice and in result, has a far greater function. For the Government's theory—which it seeks an opportunity to establish factually—is simply this: The underlying Mississippi constitutional provisions and the implementing statutory law regulating registration of voters came into being—and are currently maintained—out of a purpose by the organized State to deny Negroes the right to vote by contriving a structure having the appearance of legality, but having known, built-in devices which would, and did, effectually deny or overwhelmingly discourage the Negroes' effort toward full citizenship. The immediate means—the understanding test—must be judged, both in its purpose and in its effect, by the segregated policy of education and the wide disparity in the quality and quantity of education afforded by Mississippi to its white and Negro children. Likewise, these registration enactments must be considered against the background of official State action denying an effective use of voting rights by Negroes fortunate enough to be registered. One interesting facet of this Grand Design is the speed and apparent effectiveness of the State's reflex to Federal Court decisions or congressional enactments which tend, or seem, to restore some small portion of the Negro citizens' rights.

[fol. 3128]

I

The United States May Sue

As I read Part IX, the majority declares that this character of broad attack may not be brought by the United States because it has not been "expressly authorized to sue by act of Congress." 28 USCA §1345. To avoid some supposed constitutional restrictions on the right of the national sovereign to authorize itself to sue in its own Courts to protect the rights of its citizens, the majority reads 42 USCA §1971(c) and (d) narrowly. This leads to the conclusion that although Congress has au-

thorized suits by the Government to protect identifiable individuals from actual or threatened discrimination by identifiable State officials in the administration of valid laws, the Government may not, under this statute, maintain a suit attacking the constitutionality of statutes or State constitutional provisions which bring about like discriminaion, only wholesale. An odd reverse of the discarded notion that "The King Can Do No Wrong," it is a declaration that an indestructible nation can right only little wrongs, not big ones.

There are a number of answers which may be briefly put. First, I can conceive of no constitutional hazard. The Fourteenth and Fifteenth Amendments are ample [fol. 3129] resources if specific legislation is required. I would have considerable doubt that specific legislation is needed. Jurisdiction, as such, while always a threshold question, is here of no moment. Whatever might be the affirmative grant of jurisdiction, it is clear that Congress has not prohibited such suits. The proviso of 28 USCA §1345 is thus irrelevant, and the balance of the section imposes no requirement that a suit "commenced by the United States" be expressly authorized by an Act of Congress. This latter requirement is confined to suits commenced "by any agency or officer" of the United States.[4] Whether in a given situation the United States has standing to sue on behalf of citizens may present a problem. But it does not go to the jurisdiction of the Court as is here supposed. And as to standing to sue in vindication of fundamental, vital rights of citizenship of a kind which Congress recognizes may be vindicated at the behest of a private person.[5] I join with Judge Wisdom in United [fol. 3130] States v. City of Jackson, Mississippi, 5 Cir., 1963, 318 F.2d 1, 14-16; 320 F.2d 870. I would hold that, apart from the Fourteenth Amendment, the Commerce

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[4] 28 USCA §1345. "Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by an agency or officer thereof expressly authorized to sue by Act of Congress."

[5] 42 USCA §1983; cf. Monroe v. Pape, 1961. 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492.

Clause there, and the Fifteenth Amendment here, invest the national sovereign with the power to institute in its own Court appropriate judicial action "to promote the interest of all" by eradicating engrained official patterns of conduct which "collides with national policy as embodied in the Constitution." In re Debs, 1895, 158 U.S. 564, 15 S.Ct. 900, 39 L.Ed. 1092;[6] United States v. San Jacinto Tin Co., 1888, 125 U.S. 273 at 279, 8 S.Ct. 850, 31 L.Ed. 747; United States v. American Bell Telephone Co., 1888, 128 U.S. 315, 367, 9 S.Ct. 90, 32 L.Ed. 450; Sanitary District of Chicago v. United States, 1925, 266 U.S. 405, 425-26, 45 S.Ct. 176, 69 L.Ed. 352.

But none of these problems exist here. Congress has laid down the substantive standard in §1971(a), has prescribed the machinery to effectuate such rights in §1971(c), and has invested the District Courts with jurisdiction by [fol. 3131] §1971(d). Under this structure whenever "any person," which includes the State, is engaging "in any act or practice which would deprive any other person of any right * * * secured by subsection (a) * * * the Attorney General may institute * * * in the name of the United States, a civil action or other proper proceeding for pre-[fol. 3132] ventative relief * * *."[7] Here, of course, it is

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[6] As the Court pointed out, "*Debs* has been relied on as a basis for standing in three recent cases in this Circuit: United States v. Lassiter, W.D.La., 1962, 203 F.Supp. 20, aff'd 371 U.S. 10, 83 S.Ct. 21, 9 L.Ed.2d 47; United States v. Klans, M.D.Ala., 1961, 194 F.Supp. 897; and United States v. City of Montgomery, M.D.Ala., 1962, 201 F.Supp. 590." 318 F.2d 14.

[7] 42 USCA §1971(c). The portion here under discussion was Civil Rights Act of 1960, §601(b), 74 Stat. 90, and the section now reads: "(c) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventative relief, including an application for a permanent or temporary injunction, restraining

categorically alleged that the State of Mississippi and the other named defendants are depriving adult Negro citizens of Mississippi "who are otherwise qualified by law to vote" of their right to "be entitled and allowed to vote * * * without distinction of race, color, * * *." Of course, the phrase "who are otherwise qualified by law to vote" is important. Injunctive relief or the benefits of the referee machinery, §1971(e), extend only to those "otherwise qualified." But to read it as narrowly as does the majority would make the statute ineffectual and virtually useless. "Otherwise qualified" simply means that had there been either (a) no invalid statutory provision or (b) no discrimination in the application of a valid statute, the applicant would have fulfilled substantively all of the applicable legal requirements for voting.

Without a doubt the Government can be the adversary to champion the rights of its citizens who are the victims of state discrimination, United States v. Raines, 1960, 362 U.S. 17, 27, 80 S.Ct. 519, 4 L.Ed.2d 524, 533,[8] and it may [fol. 3133] be done when the discrimination comes from

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order, or other order. In any proceeding hereunder the United States shall be liable for costs the same as a private person. Whenever, in a proceeding instituted under this subsection any official of a State or subdivision thereof is alleged to have committed any act or practice constituting a deprivation of any right or privilege secured by subsection (a) of this section, the act or practice shall also be deemed that of the State and the State may be joined as a party defendant and, if, prior to the institution of such proceeding, such official has resigned or has been relieved of his office and no successor has assumed such office, the proceeding may be instituted against the State."

[8] "It is urged that it is beyond the power of Congress to authorize the United States to bring this action in support of private constitutional rights. But there is the highest public interest in the due observance of all the constitutional guarantees, including those that bear the most directly on private rights, and we think it perfectly competent for Congress to authorize the United States to be the guardian of that public interest in a suit for injunctive relief." 362 U.S. 17, at 27.

rank partiality in administrative practices. United States v. Lynd, 5 Cir., 1962, 301 F.2d 818; 1963, 321 F.2d 26, cert. denied, 1964, —— U.S. ——, —— S.Ct. ——, 11 L.Ed.2d 416 [No. 576, January 6, 1964]. But in the broad language authorizing the Government to institute "a civil action or other proper proceeding for preventive relief, including * * * a permanent or temporary injunction, * * * or other order," there is no indication that Congress meant to impose any artificial restrictions because of the source of the discriminatory deprivation of voting rights. Discriminatory denial of voting rights, on a retail or wholesale basis, whether from discriminatory practice or invalid statutes, was to be attacked.

What is at stake is the right of disfranchised Negroes to parity of treatment so that the bare 5% of Negro registrants may approach equality with the 500,000 white registrants (67%). If—and to resolve the if a trial is sought—the disparity is due to discrimination,[9] there is [fol. 3134] nothing in the statute to compel the Government to pursue the tortuous snail's pace on behalf of individual voters in individual counties.

II

The State of Mississippi May Be Sued

The majority's conclusion that Mississippi may not be sued is a curious one. Beset by similar constitutional apprehensions, the majority—as it did in dealing with the right of the United States to sue—reads §1971(c) narrowly to avert a declaration of unconstitutionality. But having done this, it comes out at the same place by holding that, the State being a perfect idealism, Congress may not constitutionally impute to it as its own act and

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[9] A finding of discrimination was the end result in United States v. Lynd, 5 Cir., 1963, 321 F.2d 26, cert. denied, 1964, —— U.S. ——, —— S.Ct. ——, 11 L.Ed. 2d 416, earlier opinion 301 F.2d 818; and the District Court found, and the Fifth Circuit affirmed, the finding of flagrant, rank discrimination in United States v. Ramsey, 5 Cir., 1964, —— F.2d —— [No. 20596, February 20, 1964].

deed the actions of its official representatives. Thus is §1971(c)[10] drummed out of the Act for all but that rare instance in which there are no personal officers to sue. [fol. 3135] The statute is plain and for this case it is plainly constitutional. Two things are accomplished by §1971(c). First, as a substantive matter, it declares that "any act or practice constituting a deprivation" of subsection (a) rights committed by "any official of a state or subdivision thereof" shall "be deemed that of the state." Second, it provides a procedural remedy to enforce that substantive right. It does this by prescribing two things: (a) the "state may be *joined* as a defendant"; and (b) if there is no person holding the office capable of being sued as a defendant to which the state may be *joined*, then "the proceeding may be *instituted* against the state." (Emphasis supplied.) Thus there is no room, or need for, statutory construction to determine when a state may be *joined* with other defendants. And assuming, as in *Atkins* and *Ramsey*,[11] the District Court may sometimes refuse relief against the state at the end of the trial, this is no reason for throwing out the state before the trial even begins.

A state has no general immunity from suit by the national sovereign. United States v. Texas, 1892, 143 U.S. [fol. 3136] 621, 642-646, 12 S.Ct. 488, 36 L.Ed. 285.[12] And Congress can prescribe the forum in which the suit is to be commenced as it has done in §1971(c) and (d). Case v. Boles, 1946, 327 U.S. 92, 97, 66 S.Ct. 438, 90 L.Ed. 552; United States v. California, 1936, 297 U.S. 175, 187, 56 S.Ct. 421, 80 L.Ed. 567; 28 USCA §1251(b)(2).

The fact that in the brief per curiam so heavily stressed

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[10] 42 USCA §1971(c) is set out in full at note 7, supra.

[11] United States v. Atkins, 5 Cir., 1963, 323 F.2d 733, 739; United States v. Ramsey, 5 Cir., 1964, —— F.2d —— [No. 20596, February 20, 1964].

[12] See also: New York v. United States, 1946, 326 U.S. 572, 66 S.Ct. 310, 90 L.Ed. 326; United States v. Arizona, 1935, 295 U.S. 174, 55 S.Ct. 666, 79 L.Ed. 1371; United States v. Michigan, 1903, 190 U.S. 379, 23 S.Ct. 742, 47 L.Ed. 1103.

by the majority, the Supreme Court in United States v. Alabama, 1960, 362 U.S. 602, 80 S.Ct. 924, 4 L.Ed.2d 982,[13] did not affirmatively hold §601 constitutional is a far cry from either a holding of unconstitutionality or an expressed apprehension on constitutionality. What, and all, it did was to foreclose the inference that, in remanding the case to permit trial against the State, the Court silently passed on the issue. But in both *Dogan* and *Lynd*[14] the Fifth [fol. 3137] Circuit, emphasizing the wide nature of the relief afforded by §1971 against voter discrimination, recognized that the remedy may run against the state as such.[15] And the second Alabama v. United States, 5 Cir., 1962, 304 F.2d 583, aff'd, 1962, 371 U.S. 37, 83 S.Ct. 145, 9 L.Ed.2d 112, is highly significant. After a trial on the merits following the remand by the Supreme Court pursuant to §601, the District Court found discriminatory practices on the part of the voting registrars. Even though there were

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[13] Of this disclaimer, the Fifth Circuit in *Atkins*, supra, stated: "We follow the same course in the present case." 323 F.2d 733, 739, n.7.

But the Court earlier had stated: "It should be recalled that the State of Alabama is a party to this action and is responsible for the discriminatory acts and practices of the registrars. This is expressly provided for in 42 USCA §1971 (c) as amended by the Civil Rights Act of 1960, §601 (b)." 323 F.2d 733, 739.

[14] United States v. Dogan, 5 Cir., 1963, 314 F.2d 767; Kennedy v. Lynd, 5 Cir., 1962, 306 F.2d 222, at 228, cert. denied, 371 U.S. 952, 83 S.Ct. 507, 9 L.Ed.2d 500.

[15] In a series of proceedings instituted by the Attorney General under §1974(b) and (d) to obtain voter records, constitutionality has repeatedly been upheld against specific attack. In re Dinkins v. Attorney General, 5 Cir., 1961, 285 F.2d 430, approving and adopting, Alabama ex rel. Gallion v. Rogers, M.D.Ala., 1960, 187 F.Supp. 848; Kennedy v. Bruce, 5 Cir., 1962, 298 F.2d 860; United States v. Lynd, 5 Cir., 1962, 301 F.2d 818; Coleman v. Kennedy, 5 Cir., 1963, 313 F.2d 867, cert. denied, 373 U.S. 950, 83 S.Ct. 1681, 10 L.Ed.2d 705; Kennedy v. Owen, 5 Cir., 1963, 321 F.2d 116; Kennedy v. Lewis, 5 Cir., 1963, 325 F.2d 210.

successor registrars as parties to the suit,[16] the District [fol. 3138] Court rendered a decree against the State of Alabama. Additionally, on the basis of findings of discrimination, it declared that 54 specifically named applicants were to be registered. The Supreme Court affirmed this holding that the State was subject to orders against it and the form of relief granted was appropriate.[17] Similarly, a direct injunction against the State of Mississippi was issued by the Fifth Circuit pending appeal in United States v. Lynd, 5 Cir., 1962, 301 F.2d 818, and affirmed after argument on the merits, 5 Cir., 1963, 321 F.2d 26.[18]

[fol. 3139] The majority's conclusion of unconstitutionality rests on what may best be described as the Eleventh Amendment dialectic. Underlying this approach is the literal extension of the philosophic discussions of political economy of the kind found in Ex parte Young, 1908, 209

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[16] Although the successor administrators were still parties, they were absolutely indifferent or noncommittal. 304 F.2d 583, at 588.

[17] The District Court set up an elaborate policing machinery consisting of monthly reports to both the Court and the United States Attorney which were subject to verification by checks on the voting records by agents of the United States. 304 F.2d 583, at 584. Similar relief was prescribed by the Fifth Circuit in United States v. Ramsey, 5 Cir., 1964, —— F.2d —— [No. 20596, February 20, 1964].

[18] The Court by separate unpublished order and findings in the proceeding for contempt held the Registrar Lynd in civil contempt for violations of the injunction pending appeal. Certiorari was denied, Lynd v. United States, 1964, —— U.S. ——, —— S.Ct. ——, 11 L.Ed.2d 416 (see Lynd v. United States, 32 U.S.L.Week 3214, No. 576). The civil contempt order also required that the registrar (a) immediately register approximately 40 named Negro applicants; (b) use specified sections of the Mississippi Constitution for the "understanding" test; (c) cease rejecting applications for errors if the person met the standards specified in the order; and (d) inform the applicant of the exact errors and deficiencies in the application.

U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714.[19] (See Part V.) In this approach the State is regarded as an idealism, existing separate and apart from the human beings who carry out its functions, and wholly incapable of anything wrong or unlawful. Logically, when the State through the power of its instrumentality achieves an illegal, unlawful end, it has not been the State at all, merely individuals acting in excess of the maximum authority which might have been granted. This result then pushes the proponents into another fiction. Logically, of course, there would be no constitutional federal judicial redress against such "illegal" excesses since this would not be "State action" as the concept is used in the Fourteenth Amendment or in the implementing Civil Rights Acts. E.g., 42 USCA §§1983, 1971(a). Consequently, Mississippi concedes and the majority holds that these actions, if unauthorized, constitute [fol. 3140] State action. But admitting that this is State action to allow redress against the transgressing individuals, thereby overcoming the bar of the Eleventh Amendment under the Ex parte Young doctrine, the majority insists that it is not State action so as to be imputed to the State where Congress, unfettered by the Eleventh Amendment, expressly provides for suit by the national sovereign against the State.

Were this the inevitable consequence of fictions—useful as they are for solutions of some of the law's formal incongruities, cf. Douglas, J., dissenting in Parker v. Ellis, 1960, 362 U.S. 574, 595, 80 S.Ct. 909, 44 L.Ed.2d 963—a good deal of judicial history would have to be erased. Worse, it would close the courthouse to the resolution of conflicts between the national and state governments whether they concern ownership of offshore tidelands, United States v. Texas, 1950, 339 U.S. 707, 70 S.Ct. 918, 94 L.Ed. 1221, or interference with the orders of a Federal Court.[20]

[19] See also: Ex parte Virginia, 1880, 100 U.S. 339, 25 L.Ed. 676; Coopter v. Aaron, 1958, 358 U.S. 1, 78 S.Ct. 1401, 3 L.Ed.2d 5; United States v. Raines, 1960, 362 U.S. 17, 80 S.Ct. 519, 4 L.Ed.2d 524; Poindexter v. Greenhow, 1885, 114 U.S. 270, 5 S.Ct. 903, 29 L.Ed. 185.

[20] See Mississippi v. Meredith, 1963, 372 U.S. 916, 83 S.Ct. 722, 9 L.Ed.2d 723, granting motion of the United

[fol. 3141] This is not the case in which ordinary actions of Government officials perhaps in excess of authority are sought to be imputed to the State to make the State directly responsible therefor. Here the actions taken by individuals relate to a function which is governmental in nature and wholly unrelated to private, personal activity. For here every action relates to the elective process. Under no circumstances could any official, high or low, involved in the registration-elective process be regarded as a private person. Each " * * * takes its character as a state agency from the duties imposed upon it by state statutes; the duties do not become matters of private law because they are performed by * * * " a private person, Smith v. Allwright, 1944, 321 U.S. 649, 658, 663, 64 S.Ct. 757, 88 L.Ed. 987; Terry v. Adams, 1952, 345 U.S. 461, 73 S.Ct. 809, 97 L.Ed. 1152; Baldwin v. Morgan, 5 Cir., 1958, 251 F.2d 780, 790; 1961, 287 F.2d 750, at 754-55, n. 9; Boman v. Birmingham Transit Co., 5 Cir., 1960, 280 F.2d 531, 535. By their structure and express provision, the Mississippi voter statutes reflect that the action of all is that of the State and the State alone.[21]

[fol. 3142] These principles are more than ordinarily applicable if the basic theory of the Government's suit is kept carefully in mind. Unlike those charging that Negro voters are deprived of constitutional rights because of discrimination in the administration of otherwise valid statutes, the thesis is here that these voter registration laws (and Constitution) are themselves invalid because, in their

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States for leave to be named party respondent and denying certiorari from judgments holding the Governor and Lt. Governor of the State of Mississippi in civil contempt in proceedings instituted by the United States as amicus curiae-intervenor, Meredith v. Fair, United States v. Mississippi, 5 Cir., 1962, 313 F.2d 532; Meredith v. Fair, United States v. Mississippi, 5 Cir., 1962, 313 F.2d 534.

[21] See, e.g., Miss. Code §3210.5: "The county registrar, while acting within his jurisdiction and under the authority of this act, shall not be liable personally for any error of judgment." And see also Miss. Code of 1942, §3230: " * * *. Costs shall not, in any case, be adjudged against the commissioners or the registrar."

setting, they established a structure which was intended to, and in fact did permit effectual denial to the Negro of the right to vote, the final proof of which, being in the pudding's eating, is the disparate results of 67% *vs.* 5%. On such a theory, it is conceptually impossible for statutes (and constitutional provisions) to be anything other than States actions, as the State, by the State, and for the State. Everything under attack here—the understanding test, promulgation of the registration application form, the duty to fill it out without assistance, prohibition against advice concerning errors, the good moral character test, the right of citizen challenge—are all strictly prescribed in the Mississippi Constitution and statutes. Acts done thereunder are truly acts of the State, not merely State actions by individual persons.

[fol. 3143] Substantively, there can at this late date be no question of the constitutional power to charge the State directly for denial of voter rights accomplished by the statutory structure or its administration. Under §1971(a) the right is guaranteed to vote without distinction of race "* * * any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding." Discriminatory State Constitutions and laws which were found to be unconstitutional in themselves have been voided by the Supreme Court pursuant to this subsection.[22] Guinn v. United States, 1915, 238 U.S. 347, 355-56, 35 S.Ct. 926, 59 L.Ed. 1340; Myers v. Anderson, 1915, 238 U.S. 368, 35 S.Ct. 932, 59 L.Ed. 1349.

The rich experience in voter discrimination affords an ample basis for the conclusion that there is a reasonable connection between the congressional determination that

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[22] 42 USCA §1971(a) was designated Rev.Stat. §2004 when *Guinn* and *Myers* were decided. It is clear from the legislative history that 42 USCA §1971(c) imposes no substantive limits on the scope of the rights protected by §1971(a). Section 1971(c) provides an enforcement procedure to implement §1971(a) similar to that available by virtue of Rev.Stat. §1979 (now 42 USCA §1983) to enforce Rev.Stat. §2004. H.R.Rep. No. 291, 85th Cong., 1st Sess. 12 (1957).

in voting suits, the acts of local representatives of government may be deemed to b the acts of the State on the one hand, and the rights to be secured under the Fourteenth and Fifteenth Amendments on the other. The scope [fol. 3144] of congressional power under the Fourteenth and Fifteenth Amendments is surely broad enough for the adoption of any remedial legislation "necessary and proper for counteracting such laws as the states may adopt or enforce, and which, by the Amendment, they are prohibited from making or enforcing, or such acts and proceeding as the states may commit or take, and which by the amendment, they are prohibited from committing or taking." Civil Rights Cases, 1883, 109 U.S. 3, 14, 3 S.Ct. 18, 27 L.Ed. 835.

III

Majority Applies Incorrect Standards for Dismissal

While professing to follow the standards epitomized in Conley v. Gibson, 1957, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80,[23] the majority commits a basic procedural error. It subjects the Government's complaint to tests no longer appropriate under the Federal Rules of Civil Procedure.

The majority is preoccupied with two things, each contrasting the other. Its approach emphasizes that the allegations must be of *facts*, as distinguished from *legal conclusions*. This becomes vital to its thesis since technically it is said the motion to dismiss admits only [fol. 3145] facts well pleaded.[24] But F.R.Civ.P. 8(a)(2) does

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[23] See Majority Opinion, note 1 and accompanying text.

[24] In the instant case the Court unanimously overruled all motions of all defendants which sought to compel the Government to plead allegations of discrimination with factual specificity under F.R.Civ.P. 9(b) on the asserted theory that these were equivalent to charges of fraud. This ruling was clearly correct. United States v. Lynd, 5 Cir., 1963, 321 F.2d 26, 27, cert. denied, 1964, —— U.S. ——, —— S.Ct. ——, 11 L.Ed.2d 416; United States v. Lynd, 5 Cir., 1962, 301 F.2d 818, 822, cert. denied, 371 U.S. 893, 83 S.Ct. 187, 9 L.Ed.2d 125.

not require that facts be pleaded, only that the complaint "shall contain * * * (2) a short and plain statement of the claim showing that the pleader is entitled to relief * * *." Professor Wright points out that a

> "Claim for relief stated in general terms and legal conclusions may be sufficient to inform the adversary and to withstand a motion to dismiss; * * * the sufficiency of a claim so stated is not tested by the strict standards once applied to determine whether a 'cause of action' was sufficiently stated." 1A Barron & Holtzoff, Federal Practice and Procedure §356, at 360 (Wright ed. 1960).

But I do not press this as a technical principle because the complaint charges discriminatory purpose and effect in the most positive, direct and simple terms. For example, after reciting factual, statistical and historical details in the first 15 paragraphs, it charges that "one of the chief purposes" of the newly adopted Constitution of 1890, [fol. 3146] "* * * was to restrict the Negro franchise and to establish and perpetuate white political supremacy and racial segregation in Mississippi." This was accomplished, the complaint charges, through the understanding clause. The complaint goes on to allege that later, under the stimulus of a decision of the Fifth Circuit [25] which construed Article 244, the "read *or* understand" provision, disjunctively and the 1954 school decision, an amendment was adopted requiring ability to read *and* understand. The effect of this was to subject the vast body of unregistered adult Negroes (numbering over 475,000) to new and stringent requirements to which the mass of white voters (numbering 500,000) had not been subjected. This amendment, it is alleged, was "designed to perpetuate in Mississippi white political supremacy, a racially segregated society, and the disenfranchisement of Negroes."

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[25] Peay v. Cox, 5 Cir., 1951, 190 F.2d 122. This case is heavily stressed by the majority. See Parts V, n. 17, XIII, n. 59. The aspect of the case requiring a voter to exhaust administrative remedies has been legislatively overruled. 42 USCA §1971(d).

Similarly, in the "fourth claim" the complaint recites in detail the 1960-1962 efforts of the Government through the Federal Court proceedings to obtain voter registration records in Mississippi, and in other proceedings to enjoin discriminatory practices, chiefly in Forrest County.[26] [fol. 3147] After factually alleging developments in the court proceedings, the complaint goes on to state that to overcome specific provisions of the Fifth Circuit's injunctive order—especially those requiring assistance to Negro applicants on an equality with whites—the Mississippi Legislature enacted a package of laws.[27] These are alleged to be unconstitutional for a number of specific reasons. These include the unreasonable, arbitrary disqualification for formal, technical, inconsequential errors, "freezing in" white voters while "freezing out" unregistered Negroes by more stringent standards and requiring publication of the names of applicants, thus subjecting Negroes to harassment[28] by whites, etc.

[fol. 3148] Of course these serious charges cannot be brushed off as "legal conclusions." The majority takes a double tack to circumvent them. The first seems to be

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[26] This battle was on many fronts. In Kennedy v. Lynd, 5 Cir., 1962, 306 F.2d 222, cert. denied, 371 U.S. 952, 83 S.Ct. 507, 9 L.Ed.2d 500, the Government sought, and after reversal in the Fifth Circuit, obtained the right to voter records under §1974(b). A few months earlier in United States v. Lynd, 5 Cir., 1962, 301 F.2d 818, the Fifth Circuit issued its own injunction which was affirmed after hearing on the merits, 5 Cir., 1963, 321 F.2d 26, cert. denied, 1964, —— U.S. ——, ——S.Ct. ——, 11 L.Ed.2d 416. Simultaneously the Fifth Circuit by order found Lynd in civil contempt. See note 18, supra.

[27] These were described as House Bill 900, amending §3213; H.B. 901 amending §3232; H.B. 905 amending §3209.6; H.B. 822, 904; H.B. 903.

[28] Cf. N.A.A.C.P. v. Alabama, 1958, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488; Bates v. Little Rock, 1959, 361 U.S. 516, 80 S.Ct. 412, 4 L.Ed.2d 480; Gibson v. Florida Investigation Committee, 1962, 372 U.S. 539, 83 S.Ct. 889, 9 L.Ed.2d 929.

that the truth of these charges—i.e., discriminatory purpose and effect—is of no legal consequence since this goes to the motivation of legislation and this is a subject free from judicial scrutiny. If—and the if is a very tiny one—that ever were the law, Gomillion v. Lightfoot, 1960, 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110, now makes it clear that unconstitutional racial discrimination gets no cloak of judicial immunity simply because the means used is State legislation. The supposed "motivation" of the legislators is no haven and affords no insulation from judicial inquiry.

The second seems to be that, assuming them to be legally significant, there are no possible evidentiary ways of establishing the truth of the charges. The majority reasoning in this facet seems to run this course. The Government by pretrial interrogatories from the defendants was required to state the exact factual basis for these charges, the witnesses to be used on the trial in support thereof, [fol. 3149] etc. The Government filed detailed responses and presumably put its best foot forward. Consideration of these materials by the Court reveals that these "facts" cannot be established since all of this is either hearsay or otherwise inadmissible.[29] In other words, the majority

> Majority Opinion, Introduction 2, n. 1.

in concluding that no claim is set forth looks to interrogatories to establish that no claim can be *proved.* But on a motion to dismiss[30] under F.R.Civ.P. 12(b)(6), this may not be done. Mullins v. DeSoto Securities Company,

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[29] The majority passes it off in this fashion:

> "[We further find] that the interrogatories [have] been answered and sworn to by various attorneys for the plaintiff and set forth the results of their investigations and [are] made up of legal or factual conclusions from hearsay evidence or [are] otherwise inadmissible in evidence."

[30] No motion for summary judgment was filed or granted so these materials do not become pertinent under F.R. Civ.P. 12(c) and 56(a).

5 Cir., 1943, 136 F.2d 55; Kohler v. Jacobs, 5 Cir., 1943, 138 F.2d 440; 2A Barron & Holtzoff §778, at 391.

This is far from saying, however, that the interrogatories are irrelevant at this stage. Quite to the contrary, once the proper standard is applied, these become the best proof that the Government has at least an arguable basis for establishing its claim on a trial. This brings us to the [fol. 3150] simple standard of Conley v. Gibson[31] that "the accepted rule" is "that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Of this problem, the Fifth Circuit has said, "Final disposition of a civil action on the basis of bare bones pleading is a tortuous thing. How a standard so simply expressed, so often repeated, is aparently so often overlooked * * * is hard to understand. We have phrased and rephrased it in these terms. '* * * A motion to dismiss for failure to state a claim should not be granted unless it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of his claim * * *' DesIsles v. Evans, 5 Cir., 1952, 200 F.2d 614, 615 * * *." Arthur H. Richland Co. v. Harper, 5 Cir., 1962, 302 F.2d 324, 325. Of course the prineiple is a series of negatives, each of which the movant (Mississippi) had to overcome. The complaint [1] "should not be dismissed * * * unless" [2] it is made to appear "beyond doubt" that the plaintiff [3] "can prove no set of facts" entitling him to relief. Apart from the notion [fol. 3151] of immunity of legislative motivation, now thoroughly discarded by Gomillion v. Lightfoot, supra, nothing in the majority opinion even remotely reveals how the defendants carried this burden. But I need not rest on concepts of burden since these interrogatories establish firsthand in great factual detail historic materials from which a trier can infer that these legislative-constitutional provisions came into being to provide the mechanism by which the Negro would be denied the right to vote and how—faithful to its conception—it has worked so well to achieve the present startling disparity. Testing

[31] 1957, 355 U.S. 41, 46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80.

the complaint from the restricted vantage of a motion under F.R.Civ.P. 12(b), the Court cannot at this stage make a blanket ruling against the admissibility of all of this material. Indeed, all, or nearly all, will be plainly admissible under the liberal approach of F.R.Civ.P. 43(a). Dallas County v. Commercial Union Assurance Co., 5 Cir., 1961, 286 F.2d 388; Monarch Ins. Co. v. Spach, 5 Cir., 1960, 281 F.2d 401;[32] Hall v. St. Helena Parish School Board,

IV

Abundant Likely Evidence to Establish Prima Facie Case

[fol. 3152] A consideration of a very small part of the material will illustrate the substantial basis for the Government's claim. This material both acquires a meaning from its setting and offers additional proof of that setting. This is vital as the Supreme Court, analyzing the holding in Davis v. Schnell, M.D.Ala., 3-Judge (81 F.Supp. 872, 1949, aff'd mem., 1949, 336 U.S. 933, 69 S.Ct. 749, 93 L.Ed. 1093) which struck down an "understanding and explain" test had this to say. "The legislative setting of that provision and the great discretion it vested in the registrar made clear that a literacy requirement was merely a device to make racial discrimination easy." Lassiter v. Northhampton County Bd. of Elections, 1959, 360 U.S. 45, 53, 79 S.Ct. 985, 3 L.Ed.2d 1072. Of course a part of that setting is what the Fifth Circuit has de-
[fol. 3153] scribed as the Mississippi "steelhard, inflexible, undeviating official policy of segregation." United States

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[32] This approach has effectually been adopted by the Special Committee on Evidence of the Judicial Conference of the United States in its Preliminary Study of the Advisability and Feasibility of Developing Uniform Rules of Evidence for the Federal Courts, 30 F.R.D. 73, 79 (1962). E.D.La., 1961, 197 F.Supp. 649 aff'd mem., 1962, 368 U.S. 515, 82 S.Ct. 529, 7 L.Ed.2d 521; Davis v. Schnell, S.D.Ala., 1949, 81 F.Supp. 872, aff'd mem., 1949, 336 U.S. 933, 69 S.Ct. 749, 93 L.Ed. 1093; Morris v. Harmer, 1883, 32 U.S. 348, 351 (7 Pet.) (per Story, J.).

v. City of Jackson, Mississippi, 5 Cir., 1963, 318 F.2d 1, 5. The policy takes many forms. It "is stated in its laws.[33]

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[33] The policy finds frequent, formal and legislative expression. Emphatic is the Resolution of Interposition, Senate Concurrent Resolution No. 125, adopted by the Legislature of the State of Mississippi on February 29, 1956. See also Miss. Code of 1942, §4065.3 commanding that all employees of the State and its subdivision "be and they each of them, in their official capacity are hereby required" to give "full force and effect in the performance of their official and political duties to the Resolution of Interposition * * * and are further directed and required to prohibit, by any lawful, peaceful and constitutional means, the implementation of or the compliance with the Integration Decisions of the United States Supreme Court of May 17, 1954, * * * May 31, 1955, * * * and to prohibit by any lawful, peaceful and constitutional means, the * * * mixing or integration of the white and Negro races in public schools, public parks, public waiting rooms, public places of amusement, recreation or assembly in this State, by any branch of the federal government, any person employed by the federal government, any commission, board or agency of the federal government * * * and to prohibit, by any lawful, peaceful and constitutional means, the implementation of any orders, rules or regulations of any board, commission or agency of the federal government, based on the supposed authority of said Integration Decisions * * *. * * *. The prohibitions and mandates of this Act are directed to the aforesaid executive branch * * * and all individuals thereof in their official capacity only. Compliance with said prohibitions and mandates of this act * * * shall be and is a full and complete defense to any suit whatsoever in law or equity, or of a civil or criminal nature which may hereafter be brought against the aforesaid executive officers * * * or employees * * * by any person, * * * the State of Mississippi or any [fol. 3154] other state or by the federal government of the United States, any commission, agency, subdivision or employee thereof."

Part and parcel of this program is the State Sovereignty Commission, Miss. Code of 1942, §§9028-31-48 [Laws 1956]

It is rooted in custom." [34]

[fol. 3155] The historical materials reveal that a policy

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of which the Governor is the Chairman. It is charged with the duty " * * * to do and perform any and all acts and things deemed necessary and proper to protect the sovereignty of the State of Mississippi * * * from encroachment thereon by the Federal Government or any branch, department or agency thereof * * *." Miss. Code of 1942, §9028-35. Segregation is specifically ordained for: Public schools: Miss. Const., 1956, art. 8, §207; Miss. Code of 1942, §§6220.5 (integration is a criminal offense), 628-03, 6766, 6475-14, 6336-05, 6336-06(a). Public transportation and terminals: Miss. Code of 1942, §§2351.5, 2351.7, 3499, 7784, 7785, 7786, 7786-01, 7787, 7787.5. County and municipal jails and state prisons: Miss. Const. §225; Miss. Code of 1942, §§3374.5, 4259, 7913, 7971. Insance and charity hospitals: Miss. Code of 1942 §§6681-83, 6927, 6973-74. Further, it is a crime to conspire to overthrow the segregation laws of the State, Miss. Code of 1942, §2056.

Meredith's admission to the University of Mississippi produced a flood of like enactments. H.B. 2, First Extraordinary Session, 1962, 7 Race Rel. L. Rep. 1247 (1962), provides that "every word spoken * * * and every official act done * * * heretofore or hereafter by any officer, agent or employee of the State of Mississippi in anywise connected with or incident to keeping the Institutions of Higher Learning and the public schools and colleges of this state racially segregated * * * is hereby declared to be and established as the sovereign act or acts of the sovereign State of Mississippi * * * and not the individual act of such person * * * and shall be given full force and effect as the substantive law of this state as the official sovereign act * * * of this state and not the private or individual act * * * of such persons * * *." House concurrent Resolution No. 18, First Extraordinary Session, 1962, 7 Race Rel. L. Rep. 1248 (1962), recites the developments on the admission of James H. Meredith and the use of federal troops, and petitions the Government of the United States for a redress of grievances including the removal of Meredith from the University.

[34] The Court took judicial notice of this in Meredith v. Fair, 5 Cir., 1962, 298 F.2d 696.

so open, so frank, so candid did not accidentally pass by the voter problem. The Fifteenth Amendment, with its plain prohibition, posed difficulties. But a way was found to make segregation complete and total. This was to be accomplished through a number of steps.[35]

Discriminatory Purpose of 1890 Constitution

On February 5, 1890, Mississippi Legislature called for a constitutional convention to revise the Constitution of 1869.[36] Although more than 50% of the population of [fol. 3156] Mississippi was Negro, only one of the 134 delegates elected to the Convention was a Negro. The Convention opened on August 12, 1890, and by November 1 adopted a new Constitution. Under the 1869 Constitution, all males over the age of 21 years, registered to vote, resident in the State six months and not disqualified by insanity, idiocy, or conviction of certain crimes were eligible.[37] The significant changes in the 1890 Constitution

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[35] These were:

(1) An understanding test

(2) Careful districting of white versus black counties

(3) An electoral system to preserve white control on executive and judicial elections

(4) Use of the pure white democratic primary and

(5) Restriction of party membership.

[36] In the discussion of this subdivision I draw on materials furnished in response to interrogatories requesting specific facts on which the Government based the claims in paragraphs 16 and 17 of its complaint that the chief purpose of the 1890 Convention was to restrict the Negro franchise and to perpetuate white supremacy. The Government filed detailed, voluminous answers titled "Purpose of Laws," all of which I incorporate by reference. At this stage of the proceeding, it is not the Court's function (nor mine) to credit or otherwise determine its truth other than to recognize that it is plausibly available as evidence or may lead to evidence. F.R.Civ.P. 26(b).

[37] Mississippi Constitution 1869, Art. VII, §2.

were residence for two years, payment of taxes including the annual poll tax, and a requirement that the applicant be able to read or understand any section of the State Constitution.[38]

The Negroes' presence in the State posed a real problem. Constituting 53.7% of the population in 1870, the Negroes represented 57.6% in 1890. White were in control throughout the State, but not without some difficulties which one of the delegates described as "preserving the ascendency of the white people by revolutionary methods" consisting, "in plain words," of "stuffing ballot-boxes * * * carrying the elections by fraud and violence until the whole ma- [fol. 3157] chinery for elections was about to rot down." Anticipating the Convention, Senator George outlined its work. "Our first duty," he is reported to have said, "it to devise such measures, consistent with the Constitution of the United States, as will enable us to maintain a home government, under the control of the white people of the state."

From the opening note of the Convention, the theme was the single one. President of the Convention, Calhoon, described the race for racial supremacy as "one of the problems you have to encounter" and their challenge was to so arrange "this ballot system * * * as to effect one object." He was soon to spell that out. The temper of the Convention was reflected by the Resolution of the Preamble Committee. It first recited in a number of "Whereas" clauses the existence in Mississippi of the two races, their distinctive prejudices and instincts, the unchanging nature of racial differences so that "one race or the other must have charge and control [of] the governments of such states," which would lead to instability "and in as much as the white people only are capable of conducting and maintaining" government, the "negro race * * * being wholly unequal to such great responsibility

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[38] Mississippi Constitution 1890 art. 12, §§241, 243, 244. Miss. Const. §244 requires, among other things, that a voter shall "be able to read any section of the Constitution of this State; or he shall be able to understand the same when read to him or give a reasonable interpretation thereof."

* * *." It then resolved that it was the deliberate judg-[fol. 3158] ment of the Convention that "the true and only efficient remedy for the great and important difficulties" described "lies in the repeal of the XV Amendment of the Constitution * * *," so that "such restrictions and limitations may be put upon negro suffrage, by the several States, as may be necessary and proper for the maintenance of good and stable governments * * *."[39]

One delegate referring to the large adult Negro population of "70,000 * * * in excess of the white vote" declared it to be their duty to prevent the Negro majority from overthrowing the present civil government, and then offered a solution in this exclusive method: "How is this end to be accomplished? Only, in my judgment, by such an adjustment of the basis of suffrage as will secure to the white race a fixed and permanent majority. The white people * * * want to feel and know that they are protected * * * against * * * the possibility of Negro rule * * *. They demand this at our hands * * * and nothing short of this will satisfy them or excuse us. The remedy [fol. 3159] is in our hands. We can if we will afford a safe certain and permanent white supremacy in our state." Another delegate recognizing that "the powers of government are politically and constitutionally lodged in the Negro race" declared that "the paramount object of this Convention is to transfer it to and invest it in the white race." Apart from repeal of the Fifteenth Amendment "this could be accomplished" in several ways, one being "by an educational * * * qualification." Others echoed. "That is what we are here for, today to secure the supremacy of the white race." With poetic overtones, one remarked, "We are embarked in the same ship of white supremacy, and it is freighted with all our hopes." And President Calhoon made crystal clear the more generalized eloquence of his opening address. Of the Negroes, he is reported to have said: "We want them here, but their own good and our own demands that we shall devise some

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[39] Journal of the Proceedings of the Constitutional Convention of the State of Mississippi (Jackson, Mississippi: E. L. Martin, 1890) 303-04.

means by which they shall be practically excluded from government control."

These contemporary views of the delegates are borne out by the long look of history. There have been at least two reunions of the surviving delegates of the Constitutional Convention, one in 1910, another in 1927. These proceedings clearly reveal the purpose of the Convention. The "primary purpose of it was to adopt some provision [fol. 3160] * * * which would secure to the State a good and stable government, freed from the incubus of Republican or negro rule. * * * All understood and desired that some scheme should be evolved which would effectively remove from the sphere of politics in the State the ignorant and unpatriotic Negro, * * *."[40] In the 1927 meeting, the reunion was called to order with the statement that * * * on that day, thirty-seven years ago, the Constitional Convention of 1890 enacted an organic law which gave Mississippians Anglo-Saxon government, and adjourned."[41] Discussing the achievements of this Convention, the Chairman of the surviving delegates modestly declared: "It was no easy task for the convention * * * to enact a state constitution practically eliminating from the electors of the State at least eight-tenths of its colored people, citizens of the United States, in the face of the fifteenth amendment * * *." The "fifteenth amendment * * * was not violated" by this Constitution. Rather, it was "only circumvented by Anglo-Saxon ingenuity." Of "the effort * * * to practically disfranchise the Negro race" in the fact of the Fifteenth Amendment, another described the "three full weeks" of "debating this momentous issue" and the result that " * * * out of the mill was ground the [fol. 3161] franchise article in our present constitution, which will ever protect us from an irresponsible class." Convinced that "civilization depended upon the supremacy of the white race in Mississippi," but knowing full well that the right of "the colored man to vote" could not be

[40] Mayre Dabney, The Proceedings of the Reunion of the Surviving Members of the Constitutional Convention of 1890 (1910).

[41] The Proceedings of the Reunion of the Surviving Members of the Constitutional Convention of 1890, 5 (1927).

defeated because of "race, color, or previous condition," the work of the Convention was described as one in which "we belted the whole circle of expedients in legislating against h[illegible]bits and weaknesses, and, without infringing the provis[illegible]s of the Constitution of the United States, we provided for perpetual white supremacy in the State of Mississippi * * *."

Judge Thompson, one of the delegates, after remarking that there was "scarcely a conceivable scheme having the least tendency to eliminate the Negro vote that was not duly considered by the convention" then declared, "It is regrettable that all the suggestions * * * were not recorded; had they been preserved, the record would be a monument to the resourcefulness of the human mind."[42]

One delegate reciting in detail the problems besetting the State described the four-step structure of legislative apportionment (districting to favor white counties), the electoral plan for the Executive and Judiciary, limiting [fol. 3162] Negro suffrage by the annual poll tax, and the adoption of the understanding clause. He concluded that these "several suffrage requirements combined" have "as they were intended, reduced the Negro majorities to a negligible political quantity." He then characterized the problem and its solution in these doleful terms. "Concisely and correctly summed up, of the two ills Mississippi chose the lesser. She has exchanged an organic malady for a functional disorder. The Convention substituted a desiccated for a diseased electorate. The ensuing ills of the present state are within the check and correction of the white citizens."[43]

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[42] R. H. Thompson, Mississippi Constitution of 1890—An Address Delivered to the Mississippi State Bar Association (Biloxi, Mississippi: 1923) 16-17.

[43] J. S. McNeily, "History of the Measures Submitted to the Committee on Elective Franchise, Apportionment, and Elections in the Constitutional Convention of 1890," Publications of the Mississippi Historical Society. (Oxford, Mississippi: Printed for the Society, 1902) 129-140.

The Understanding Test

The understanding test was early proposed. Despite the considerable advantage this would work in favor of the whites because of the lower white illiteracy rate (white —11%; Negro—76%), some, opposing it, expressed the "fear [that] it will lead to trickery and fraud." Adopting this test "placed in the hands of the officer who is to apply the test the power to defraud and disfranchise." Recog- [fol. 3163] nizing in those early days what Negro applicants in the Twentieth Century were to experience [44] the test was criticized in blunt language that it didn't "look honest, straight-forward or manly." Rather, it "looks like a farce to make a registration officer decide whether a voter rightly interprets a clause of the Constitution." [45] Disclaiming responsibility for "anything so vague in its application and uncertain in its effect," one delegate from a black county reported he had acquiesced on the simple proposition that "half a loaf is better than no bread." There was substantial public approval for the view expressed by one that "the people sent the delegates to the Convention to secure white supremacy, not by a trick or artifice, not by fraud, stratagem, or subterfuge, but by brave, open, honest and honorable methods," declaring that this understanding "section was a fraud upon its face and the trail of the serpent was on it all," he concluded that "the mephitic vapor which arises from the section * * * makes one feel like stuffing the registration books."

[fol. 3164] One of Mississippi's distinguished legal schol-

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[44] See notes 9, 18, and 26 as to Forrest County and the *Lynd* contempt case; also notes 9 and 11, United States v. Ramsey, 5 Cir., —— F.2d —— [No. 20596, February 20, 1964].

[45] "Persuaded that the understanding clause was based on fraud," Louisiana rejected the Mississippi example. See United States v. State of Louisiana, D.C.La., 1963, 225 F.Supp. 353, 371, n. 46; also many of these, or similar materials, are discussed by Judge Wisdom in notes 45, 46, and 88.

ars and Justice of its Supreme Court, George H. Ethridge,[46] does not flinch at the word "discriminate." Of §241 he remarked, "It is said that this section while it does not discriminate against any person or race, it discriminates as to their character and nature." Not elaborating this dialectic, he then recognized that "this is one of the methods of disfranchising the Negro." As a Mississippi lawyer and Mississippi judge, he saw as federal judges were to see a quarter of a century later that with the understanding test of §244, " * * * a person who cannot read would be largely at the mercy of the registrar * * *. The registrar could pick out any section he desired and read it to him and call on him to explain it."[47]

The White Man's Democratic Primary

Few as they are, difficult as it is for them to become registered, Negro voters are effectually excluded in the elective process through the means of the democratic primary.[48] The heavy hand of the State has been in this too. [fol. 3165] Beginning in 1902 with the statutory advent of primaries,[49] the various executive committees of the Democratic Party, state and county, categorically allowed white democrats only to participate. Typical of these actions was the resolution of the State Committee in 1907. "Resolved, in addition to the qualifications prescribed by

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[46] George Ethridge, Mississippi Constitution 424-29, 435, 439, 445 (Jackson, Mississippi: Tucker Printing House 1928).

[47] He also discussed with frankness §§251 (timing of registration) and 254 (apportionment) and 256 (reapportionment).

[48] These materials also are in the answer volume entitled "Purpose of Laws" in response to interrogatories requiring the Government to state the factual detail in support of paragraph 21 of the complaint that from 1899 to 1952 white political supremacy was promoted by, among other things, Negroes being excluded from the Democratic Primary elections. I treat this as outlined in note 36, supra.

[49] Miss. Sess. Laws 1902, ch. 66.

law for voters in said primaries, all voters therein shall be white democrats." In 1915 the State Committee, rejecting the implication in other resolutions that "unjustly reflect on the white democratic elections in this state," declared that " * * * the election just concluded [was] an honest and patriotic expression of the choice of the white democrats of Mississippi."

Perhaps forecasting like indifference to the school decisions ten years later, the decision by the Supreme Court in 1944 holding "white primaries" to be unconstitutional [50] [fol. 3166] caused no change in result, only in methods. The first big test came in the July 1946 Democratic Primary election for United States Senator resulting in the renomination of Senator Theodore Bilbo. The practices were the subject of investigation by special committee of the Senate.[51] One member of the State Democratic Executive Committee, after acknowledging that "back in the old days, the State Democratic executive committee * * * specified that only white Democrats * * * take part" and the meeting held in 1946 to resolve the question posed by the Supreme Court decision, testified that while all thought the Negro "had a legal right to vote" nevertheless "* * * it was the unanimous opinion—although nothing was spread on in this about it—that they didn't want [the Negro] to vote, therefore, he wouldn't vote * * *." The conclusion, he went on, was that "we thought the best thing to do was to say nothing and not agitate the matter one way or another and let matters take their course, and so that course was pursued." [52]

[fol. 3167] This "do nothing" plan seemed to work. [53]

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[50] Smith v. Allwright, 1944, 321 U.S. 649, 64 S.Ct. 757, 88 L.Ed. 987; Terry v. Adams, 1952, 345 U.S. 461, 73 S.Ct. 809, 97 L.Ed. 1152.

[51] Hearings Before the Senate Special Committee to Investigate Campaign Expenditures, 19464, 79th Cong., 2nd Sess. [hereinafter cited Hearings].

[52] Hearings 371-72.

[53] The Senator, as a candidate for renomination, on the eve of the election described it as "Mississippi's white senatorial primary election" and urged "every white

The government's material shows specific places and names of Negroes attempting to vote in that primary who were turned away.[54]

But the "do-nothing policy" did not long prevail. In 1947 the Mississippi Legislature enacted laws to require that in order to vote in a primary, participants must be in accord with the principles of the particular party.[55] Any person may be challenged at the polls as to his qualifications and accord with the principles of the party.[56] The party organization was not slow to act. Beginning in 1948 by successive actions, it has adopted principles that Negroes could not subscribe to.[57] And these principles soon had the imprimatur of the State of Mississippi.[58]

[fol. 3168] The answers show by name, date, place and county that the system worked. Negroes trying to vote in primaries were successfully challenged. This continues up to the most recent primaries of 1962. Typical, though spectacular, was the incident in the August 1955 primary and run-off in the all-Negro town of Mound Bayou, Mississippi, Bolivar County. Accompanying the ballot boxes was a written challenge signed by each of the candidates challenging all voters from this precinct (known to be Negroes

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Democratic man and woman" to participate in it. Hearings 382.

[54] A number of Mississippi Negro voters testified of their unsuccessful efforts to register or vote, or both. See pp. 140-141, 120-121, 281-282, 225-226, 250-263, 283-284, 298, 317-320, 124-125, 213-215 of the Hearings.

[55] Miss. Sess. Laws 1947, Ex. ch. 17.

[56] Miss. Code of 1942 §3129.

[57] Resolutions of Mississippi Democratic Party 1948, 1952, 1960.

[58] See 1952 Resolution setting out and endorsing the principles adopted by the Democratic State Executive Committee, Miss. Ses. Laws 1952, Ch. 464.

These principles, legislatively approved, declared among other things: "We believe in the segregation of the races and are unalterably opposed to the repeal or modification of the segregation laws of this state, and we do not favor the practice of nonsegregation."

only) as such voters were not in accord with the declared principles of the Democratic Party.[59] Although there were 295 registered Negro voters, none were allowed to vote. Another device frequently used was the maintenance of two separate poll books by the county registrars, one being the general election poll book which included the names of qualified Negro voters. The other, a primary poll book pursuant to instructions from respective Democratic Executive Committees, excluded Negro registrants.

Separate But Not Equal Education for Negroes

[fol. 3169] Segregation of the schools, as such, may not appear to be directly involved in voter registration. Certainly a voter registration case cannot be made the vehicle to bring about this change in state custom and practice. But in the massive assault on voter registration here, it is a direct element of the Government's thesis. The charge is that the understanding test, as first conceived in Miss. Const. §244 and as later amended in 1954 to include read and understand, was, and is, a ready mechanism to disfranchise the Negro because of inferior education. It is the *inferior* education, not its segregated characteristic, that is important. Any appraisal of the quality of education must, of course, reckon with the open, frank policy of segregation.[60]

Although Negro children of school age have always exceeded the number of white children,[61] the general level of

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[59] A copy of the Resolution, H.C.R. No. 7, Ch. 464, Miss. Acts of 1952 (see note 58, supra) was attached.

[60] The matters discussed in this subdivision come from the volume of answers to interrogatories entitled "Comparison of Education for Negroes and White Persons 1890-1963," comprising 89 pages in response to a request for the factual detail in support of the contention in paragraph 31 of the complaint that public educational facilities for Negroes were and are inferior to those provided for white persons. I treat these as in notes 36 and 48, supra.

[61] [fol. 3170] State of Mississippi School Census

Year	White	Negro
1890	207,652	292,581
1910	310,548	410,089
1929	379,678	493,987
1949	393,804	492,349
1960	329,215	337,871

Negro teacher training is below that for whites.[62] Likewise, the amount spent, including teachers' salaries, is far less for Negroes despite recent spectacular increases.[63]

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[62] For example, in 1929-1930 out of a teacher corps of approximately 3,900 white teachers and 3,100 Negroes, 3,263 whites were college graduates whereas 2,719 Negroes were not even high school graduates. By 1954 there was considerable improvement, but white teachers with college degrees outnumbered their Negro counterparts by three to one.

[63] The instructional cost per child in average attendance is graphically different:

	1900–1901	1929–1930	1939–1940	1949–1950	1956–1957	1960–1961
White	$8.20	$40.42	$31.23	$78.70	$128.50	$173.42
Negro	2.67	7.45	6.69	23.83	78.70	117.10

The following are selected comparisons of expenditures above the state minimum program listed on a per child basis:

District	White	Negro
Amite Co.	$ 70.46	$ 2.24
Benton Co.	59.42	15.63
Claiborne Co.	142.64	19.88
Coahoma Co.	139.33	12.74
Hinds Co.	80.24	10.41
Leflore Co.	175.38	9.52
Madison Co.	171.24	4.35
Yazoo Co.	245.55	2.92

During 1954-1955 every school district spent more for whites than Negroes. It ran from a high of $600, Glenwood District, Tallahatchie County (whites) to a lot of $45, Senatobia District, Tate County (Negroes) averaging as follows:

	White Per Pupil Cost	Negro Per Pupil Cost
County average	$161.00	$ 87.00
Separate district average	181.00	106.00

Even these figures may be deceptive. In the Report of a Study of the Education for Negroes in Sunflower County, Mississippi (Bureau of Educational Research, School of Education, University of Mississippi: March 1950), it was pointed out, at 134-35, "Sunflower County in 1939-40 received $73,626 per capita fund. Since 79 per cent of the

[fol. 3171] Only recently, and then under the impetus of the 1954 school decisions, has there been any near parity as to the number of consolidated versus unconsolidated (one and two-teacher schools).[64] The same is true of enrollment in high schools, a matter of much consequence in a test designed to elicit interpretation and understanding of a constitutional provision and the duties of citizenship.[65]

[fol. 3172] This is not a mere matter of statistics. The responsible officials of Mississippi have publicly recognized the disparity in educational facilities and the necessity for substantal improvement.[66] Governor Wright in 1950 urged

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educables at that time were Negroes, $58,165 was the amount received on the basis of the Negro children. However, only $35,564 was spent for 'instruction' for the Negro children. Evidently $22,601 of this amount was expended elsewhere—probably on the schools for the whites. In the last two years the difference in the amount received and the amount [not spent for Negro children] is more than twice the $22,601 figure.''

[64] Between 1910 and 1930 Negro schools were not consolidated. As of 1930-1931, the make-up of the schools was as follows:

	Number Consolidated Schools	Number Unconsolidated Schools	Number One-teacher Schools	Number Two-teacher Schools
White	959	789	515	202
Negro	16	3484	2411	832

[65] In 1930-1931 out of 752 secondary schools, only 46 were Negro with an enrollment of 5,012 about 1/10th of that for whites (49,742). By 1953 the enrollment ratio was still nearly three to one (474—285 schools) with Negro enrollment 26,667 compared with 61,323 whites. Fortunately for present and future generations, 1961-62 shows much improvement (white 77,694; Negroes 48,798).

[66] It was not always so. Governor Vardaman recalling his proposal for a constitutional amendment to ''control the distribution of a public school fund so as to stop the useless expenditure in the black counties'' is reported as saying of a bill providing money for a Negro school in Holly Springs, ''Did I sign it? No, I killed the bill when I killed the school * * *.''.

ation. "We face," he told the joint session of the Legislature, "a serious problem in the matter of providing comparable educational opportunities for the two races in our State." He identified the problem in the three phases of teacher salary adjustments, transportation, and building facilities. He recommended legislation for equalization of teacher pay "and removing any discrimination as between the races." Recognizing that what existed was not separate and equal, he urged "that a program be enacted providing for equal facilities between the races recognizing that children of both races are entitled to equal opportunities," in, of course, segregated facilities.[67] The same views were echoed by Governor White two years later. "It is true that there is a wide variation in educational opportunities between the races."[68]

[fol. 3173] And various official biennial reports of the State Superintendent of Public Education have portrayed this great disparity in graphic terms. Over a wide space of years, they pinpoint the causes. For example, "in many counties * * * Negro children are forced to attend school in mere shacks or in church houses."[69] As of 1930-1931, "98.3 percent of all children in schools for the colored race were in grades one to eight inclusive and 1.7 percent in grades nine to twelve. The great majority of colored children never got beyond the sixth grade."[70] The [fol. 3174] fact is "that we spend less money in Mississippi per child in the schools for the Negro race than in the schools for the white race."[71] Teacher quality for Negroes

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[67] Message by Governor Fielding L. Wright to the Joint Session Mississippi Legislature, January 3, 1950.

[68] In 1953 Extraordinary Session Senate Journal 970.

[69] Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi for the Scholastic Years 1929-30 and 1930-31, 45 [hereinafter cited Biennial Report].

[70] Twenty Years of Progress 1910-1930 and A Biennial Survey Scholastic Years 1929-30 and 1930-31 of Public Education in Mississippi 130 [hereinafter cited Twenty Years of Progress].

[71] Twenty Years of Progress 107.

suffered from lack of adequate colleges. As a consequence "the quality of work done in the school room by the majority of negro teachers would not rank very high when measured by any acceptable minimum known to the leaders in educational thought." [72] The Negro teaching force had "an average of 50 enrolled pupils each", but the average was deceptive since "teachers in the lower grades frequently have in their charge from seventy-five to one hundred and fifty pupils. * * *." [73] In 1933-35, out of 3,700 Negro schoolhouses, only two-thirds were publicly owned. For the other third (1,440), schools were "conducted in churches, lodges, old stores, tenant houses, or whatever building is available." [74]

[fol. 3175] As late as 1937 "ninety-four percent of the educable Negro population of high school age" were "not in school * * *." [75] This was hardly surprising since "there [were] twenty-eight counties in Mississippi which [did] not have any recognized high school facilities for Negroes." [76] As of that same period, the state board prescribed $28 per month for a six-month term ($170 per year) for Negro teachers. It was, of course, "obvious that the salary problem is one of our real problems * * * in Mississippi." [77] Even physical facilities as late as 1945 represented "one of the most pressing needs in Mississippi" to meet the simple but then unattained object that "schoolhouses need not be elaborate, but they should at least be sanitary, com-

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[72] Twenty Years of Progress 90.

[73] Biennial Report 1933-35, 41.

[74] Ibid.

[75] Biennial Report 1935-37, 13.

[76] Ibid. Negroes "schooled" in that era are still a factor since approximately 8.6% (79,193) of the State's 1960 Negro population were born between 1923 and 1931. (Assuming entry to first grade at 6 years, and schooling terminating grade eight.) United States Bureau of the Census, United States Census of Population 1960, General Social and Economic Characteristics, Mississippi, Final Report PC(1)-26C, Table 37, at 26-112 (1961).

[77] Biennial Report 1937-39, 16.

fortable and adequate." [78] The report of 1955-57, noting considerable progress, but recognizing "that public schools for Negroes have been poor in the past" made specific recommendation for "getting all communities to meet the responsibility of truly equalizing facilities" for Negro and [fol. 3176] whites.[79] It recommended also increase in graduate training for Negro teachers, administrative supervision for Negro elementary schools since "many elementary teachers are not fully qualified," and local supervision of classroom teaching since "the fact that public schools for Negroes have been poor in the past * * * has a direct bearing on the quality of instruction being done * * *." [80]

All of these findings have been confirmed by various professional studies, including those for the University and the State Legislature.[81]

Pursuant to legislation in 1953, all counties were to make educational surveys of educational facilities and submit reorganization plan by July 1, 1957. Surveys were to be made [fol. 3177] by specified agencies of the state university system. The materials furnished by the Government contain summaries and extracts from 1955 to 1957 reports made in many counties.[82] As to Negro schools, they are nearly all

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[78] Biennial Report 1943-45, 21-22.

[79] Biennial Report 1955-57, 40, 41.

[80] Biennial Report 1957-59, 40, 41.

[81] See A Report of the Committee of Investigation of the Teacher Training Facilities for Negroes in Mississippi, Bulletin No. 61 (1930) State of Mississippi Department of Education; Higher Education in Mississippi: A Survey Report to the Board of Trustees, Institutions of Higher Learning (1954) John E. Brewton, Director; Public Education in Mississippi: Report of Mississippi Legislative Education Study Committee, December 1961; Public Education in Mississippi: Report of Advisory Study Groups Institutions of Higher Learning, 1961.

[82] The Reports extracted are by Dr. John E. Phay, Director Bureau of Educational Research, University of Mississippi or Dr. Ralph S. Owings, Head and Professor of

the same: with per capita per pupil expenditures running frequently two to one in favor of whites, Negro school buildings are run-down, inadequate, unlighted, overcrowded, without desks, blackboards or needed facilities, staffed by overworked, underpaid, undertrained Negro teachers.[83]

Educational Administration, Mississippi Southern College.

As for another era (see note 76, supra), those "schooled" in the 1955-57 era are important. Those then attending (grades 1 through 12) span birth years of 1939-1951. Negroes born during that period comprise approximately 24.6% (226,500) of the 1960 Negro population. See United States Bureau of The Census, United States Census of Population 1960, General Social and Economic Characteristics, Mississippi, Final Report PC(1)-26C, Table 37, at 26-112.

[83] The following comments concerning Negroes in various county reports are typical: "The program is very weak and inadequate * * *. These boys and girls are not getting a program of education that appears to be of too much consequence. * * *. The listing of the offerings would not reveal anything that would prove valuable." "The buildings for Negroes are most inadequate and in a deplorable condition." "There is a dearth of teaching materials and equipment in all the Negro schools. There is a shortage of chalk boards, bulletin boards, reading material, charts, maps, and library books." "The Negro buildings are most inadequate and in a deplorable condition * * *. 'It is quite evident from examination of the pictures of the schools that the Negro situation is pathetic.'" In a one-teacher school, "the windows are inadequate, * * * it has no lights and the furniture consists of chairs and benches. There is no water supply * * *. Teaching aids, such as chalk boards and bulletin boards are desired." Another one-teacher schoolroom "has a metal roof that leaks. The windows are inadequate and half the panes are missing * * *. There are no lights and the furniture is home-made benches. There is no water supply at all." In another, "the teaching aides are most inadequate. The entire facili-

[fol. 3178] The 1890 Plan Has Worked

In the field of racial discrimination, figures do count. Figures tell the best, if not the whole, story. United States ex rel. Seals v. Wiman, 5 Cir., 1962, 304 F.2d 53 at 66, 67.[84] The figures here are little less than devastating.[85] In many counties other than the six listed in the majority opinion (Part IV), the actual result shows that the percentage of registered Negro voters runs from a low of 0% to a high of 2.9%. This is in contrast to a low of 57% and a high of 100% for whites in the same counties.[86]

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ties are not suitable for school." Of another county, "It may be said that throughout the entire county no high school for Negroes exists which presents a curriculum attractive enough to hold boys and girls in school. The needs of these youngsters are not being met." It "may be noted * * * that in the Negro elementary schools, the quality of education and the materials available for teaching seem to be far below that in the white schools. * * *." In "* * * both * * * the quality and quantity of housing, in the availability of instructional materials * * * the Negro elementary schools are below those of the white schools. * * *."

[84] Brown v. Allen, 1953, 344 U.S. 443, 73 S.Ct. 397, 97 L.Ed. 469; Smith v. Texas, 1940, 311 U.S. 128, 61 S.Ct. 164, 85 L.Ed. 84; Speller v. Allen, 1953, 344 U.S. 443, 477, 73 S.Ct. 397, 97 L.Ed. 469.

[85] I treat this as in notes 36, 48, and 60. The material comes from the Government answers stating factual detail in support of the statistical allegations in the complaint.

[86]

June 1962

	Whites			Negroes		
County	Number Over 21	Registered	%	Number Over 21	Registered	%
Panola	7,639	5,309	69	7,250	2	.028
Tunica	2,011	1,436	71	5,822	42	.72
Marshall	4,342	4,162	96	7,168	57	.8
Yazoo	7,598	7,130	93.0	8,719	256	2.9
Copiah	8,153	7,533	92.0	6,407	25	.39
Madison	5,622	5,458	97	10,366	121	1.1
Clarke	6,072	5,000	83 *	2,998	1	.03
Tallahatchie	5,099	4,330	85	6,483	5	.07
Holmes	4,773	3,530	74	8,757	8	.09
Kemper	3,113*	3,224*	100	3,221	30	.9
Forrest	22,431	12,655	57	7,495	22	.3
Lamar	6,489	5,593	91	1,071	0	.0

* This is as reflected in the answers. Doubtless one or the other figure is in error.

[fol. 3179] Of course there might be several explanations for these figures. One might be that this is what the Negroes want. Another might be that this is just accidental. A third might be that this proves the effectiveness of a carefully contrived plan to exclude the Negro. A choosing from those possible inferences is not a function of pleadings or a motion to dismiss. On a motion to dismiss, the Court cannot, for example, declare that this is all one of nature's accidents. And in the face of other evi-
[fol. 3180] dence which the Government proposes to offer, it cannot be charged off at this early stage as voluntary conduct by many thousands of adult Mississippi Negroes. For in like response to interrogatories seeking factual basis for the allegations in the complaint that Negroes have regularly, consistently been denied the right to register or vote or both, the Government, citing chapter, verse, county, date, time, name, and circumstance, has identified thousands of Negroes who have sought but who have been denied these rights.[87] This leaves as plausible the inference asserted by the Government—that the 1890 plan, supplemented by inferior schools in a segregated society, operating in a closed white man's democratic primary with changes in 1954, 1960, and 1962, freezing in a large body of whites while freezing out thousands of Negroes—has achieved its purpose. Only a trial, at least in the present posture of this case, can resolve the choice.

[fol. 3181] That inference, once drawn, after a trial either as a matter of fact or as a matter of law, will go a long way—if not the whole way—toward establishing that the entire voter-registration-voting structure is invalid, not because it has been discriminatorily applied, but because it was meant to work that way and has.

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[87] These are found generally in the answer volumes. These answers were 19(f), (g), relating to paragraph 69 of the complaint. These weigh approximately 35 pounds, and are over one foot thick. I treat these as in notes 36, 48, 60, and 85.

This illustrates also the significance of evidence of discrimination on the Government's theory. It is not to show discriminatory application, but to show the result of a discriminatory structure.

Meeting the Exigencies From the Law's Reverses

The rapidity with which even the slightest breaches in this Maginot Line were closed demonstrates a continuing purpose, not only to institute but to maintain a structure of discrimination. Only brief mention may now be made of some of the more vivid of these.

And For Or

The first is the amendment to §244 to prescribe a read and understand test. Though Peay v. Cox, 5 Cir., 1951, 190 F.2d 122, opened up the door to Negroes who could read *or* understand, the effort in 1952 to amend the Constitution was unsuccessful. In 1954 the ful impact was soon realized under the pressure of the 1954 Supreme Court school decision. With effective aid from White Citizens Councils, both the voter registration amendment and the school amendment giving the Legislature the discretion to maintain public schools were adopted.[88]

[fol. 3182] Was this action just a coincidence? Or was it an immediate and effective response against the possibility that the great number of under-educated adult Negroes, the product of segregated schools then acknowledged to be inferior, would now at least be eligible to orally state an understanding or interpretation? And if not now, would they not in the early future be eligible as more and more Negroes would receive an education of equal quality as a result of "integrated" attendance at formerly all white schools? At this stage of the proceedings, the minimum called for is a trial. For if those were the purposes, then Gomillion v. Lightfoot, 1960, 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110, would permit both judicial inquiry into, and judicial redress for, such racial discrimination.

The 1962 Package

The complaint describes in detail the Government suit against Registrar Lynd, Forrest County, including the appeal, the injunction pending appeal by the Fifth Circuit

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[88] This material is found in the Government's answers. I treat it as in notes 36, 48, 60, 85 and 87.

resulting thereafter in contempt orders, hearings, judgments and affirmance.[89] Consequently, the Government is [fol. 3183] in no sense confined to the material set forth in answers to the interrogatories.[90] The Government may also legitimately point to all of the now publicly known developments in the *Lynd* cases to demonstrate that it can prove its theory. In a nutshell, the theory is that, most if not all, of the 1962 package of bills[91] was a direct, immediate effort to overcome or circumvent successive adverse decisions of the Fifth Circuit, particularly, in the *Lynd* cases.

The *Lynd* case essentially charged discriminatory application of laws otherwise assumed to be valid. One of the principal weapons for discriminatory administration was the registration application form.[92] Contrary to the bland assumption in the majority opinion that, "No tricky application form is alleged or exhibited," Majority Opinion Part XIV, at 66, the developments in the *Lynd* cases demonstrated that the form was loaded with ambiguities, pitfalls, and traps for the unwary, and as such, was a ready-made device for racial discrimination.[93]

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[89] See notes 9 and 18.

[90] These materials are found in the multi-volume answers. I treat these as in notes 36, 48, 60, 85, 87 and 88. Also, at least at this stage, it is proper to take judicial knowledge of the records and proceedings of all of the *Lynd* cases.

[91] See note 27.

[92] This form is promulgated by the State Election Board, Miss. Code of 1942, §3209.6, as amended recently in 1962 to require a space on the form to reflect information as to good moral character.

[93] For example, items "3. State your age and date of birth:", "8. For how long have you resided in Mississippi?" "10. Specify the date when such residence began," called for identical information for a native-born continuous resident, yet discrepancies resulted in rejection. Item "12. Check which oath you desire to take: (1) General —— (2) Ministers —— (3) Ministers' Wife —— (4) If under 21 years at present, but 21 years by date of general election ——." Item "21. Sign the oath or affirmation named in Question 12," was followed by "(a) GENERAL and/or SPECIAL OATH" consisting of an affidavit with a

[fol. 3184] The greatest source of discrimination, of course, was in the requirement that the applicant copy a section of the Constitution selected by the registrar (Item 18) and then write his reasonable interpretation and meaning thereof, (Item 19) and also write a statement of his understanding of the duties and obligations of [fol. 3185] citizenship (Item 20).[94] Those sections of the Mississippi Constitution given frequently to Negroes but never to whites were §112,[95] §124,[96] §160,[97] §224,[98] and

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line for signature marked "Applicant's Signature As To Oath" and "(b) Oath of Minister and/or Minister's Wife" with an affidavit and a line marked "Applicant's Signature As To Oath." Immediately below the line for minister's signature there was another line marked "The applicant will sign his name here." Though otherwise perfectly filled out, Negro applicants were frequently rejected because of failure to sign the bottom line which most (white and Negro) constructed to be the place for a minister-applicant to sign. Both the (a) general and (b) minister's oath had blanks to fill out residence "in this State two years, and in —— Election District of —— County one year." Even though answer to Item "9 Where is your place of residence in the District" gave a correct address which would enable the registrar to know precisely from voting precinct records the proper voting District for the applicant and the answer to Item 10 "Specify the date when such residence began" would establish that it exceeded two years and one year respectively, the application was rejected if the wrong election district was named in the blanks of the oath.

[94] "Item 20. Write in the space below a statement setting forth your understanding of the duties and obligations of citizenship under constitutional form of government."

[95] §112. "Taxation shall be uniform and equal throughout the state. Property shall be taxed in proportion to its value. The Legislature may, however, impose a tax per capita upon such domestic animals as from their nature and habits are destructive of other property. Property shall be assessed for taxes under General Laws, and uni-

[Footnotes 95, 96, 97, 98 Continued on Page 1607]

§273,[99] all exceedingly long, complex provisions having little relation to the usual notions of the nature of our constitutional government and its structure. In contrast, simple, direct and more fundamental ones were given frequently to whites, but never to Negroes, such as §118,[100] §139,[101] §226.[102]

[fol. 3186] The *Lynd* case centered about the use of the application form. In the injunction pending appeal (later affirmed), the Fifth Circuit found a series of specific dis-

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[Footnotes 95, 96, 97, 98 Continued from Page 1606]

form rules, according to its true value. But the legislature may provide for special mode of valuation and assessment for railroads, and railroad and other corporate property, or for particular species of property belonging to persons, corporations, or associations not situated wholly in one county. But all such property shall be assessed at its true value, and no county shall be denied the right to levy county and special taxes upon such assessment as in other cases of property situated and assessed in the county."

[96] §124. This section is a 161-word, detailed explanation of the Governor's pardoning power and the pardoning mechanism.

[97] §160. This section is a long description of the jurisdiction of the Chancery Court elaborating technical distinctions between law and equity in real estate proceedings.

[98] §224 covers the hiring of convicts for private or public work.

[99] §273. This section is a 155-word, detailed description of the constitutional amendatory mechanism.

[100] §118. "The Governor shall receive for his services such compensation as may be fixed by law, which shall neither be increased nor diminished during his term of office."

[101] §139. "The Legislature may empower the Governor to remove and appoint officers, in any county or counties of municipal corporations, under such regulations as may be prescribed by law."

[102] §226. This section contains a one-sentence restriction on hiring of convicts.

criminations and enjoined the Registrar from committing specific acts. 301 F.2d 818 at 823. The registrar was ordered to give Negroes the benefit of the same type of assistance theretofore given to white persons; to cease rejecting applications of Negroes without giving the cause or reason for rejection; and to cease rejecting obviously qualified Negroes for inconsequential or no errors.

[fol. 3187] Typical of the immediate response was Miss. Laws 1962, Ch. 570. Prior to the amendment, this section required that an applicant fill out the application form without assistance or suggestion from any person. The amendment added that the requirements of the statute were mandatory; that no application shall be approved or the applicant registered unless all blanks on the application form are "properly and responsively" filled out by the applicant; and that both the oath as such and the application form must be signed separately by the applicant. And to inject a new standard which would defy a Federal Appellate Court determination that particular applicants were qualified as a matter of law,[103] Miss. Laws 1962, Ch. 575 was enacted to implement the 1960 Amendment to §244 by inserting a good moral character requirement. Another bill required publication of the names of applicants and allowed members of the public thereafter to challenge such applicants. Miss. Laws 1962, Ch. 572.

[fol. 3188]

V

No Legal Obstacle to Relief

When the true nature of the Government's theory is kept in mind, none of the legal arguments advanced by the majority serves as a stumbling block.

If from evidentiary materials, the Government estab-

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[103] This has been done at least twice by the Fifth Circuit. Alabama v. United States, 5 Cir., 1962, 304 F.2d 583 at 584, 594, aff'd mem., 1963, 371 U.S. 37, 83 S.Ct. 145, 9 L.Ed.2d 112. And see paragraph 2a the unpublished contempt order in the *Lynd* case, certiorari denied, 1964, —— U.S. ——, —— S.Ct. ——, 11 L.Ed.2d 416; 5 Cir., 1963, 321 F.2d 26.

lishes [104] that the disparity is the result of a structure instituted or thereafter maintained for the purpose of denying the Negroes' right to vote, then each and every statutory-constitutional element helpful to the operation of the illegal machine must fall.

Apparent validity on the face of such enactments will be of no significance. Gomillion v. Lightfoot, 1960, 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110; and see Yick Wo v. Hopkins, 1886, 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220; Lane v. Wilson, 1938, 307 U.S. 268, 59 S.Ct. 872, 83 L.Ed. 1281. Hence cases such as Williams v. Mississippi, 1898 [fol. 3189] 170 U.S. 213, 18 S.Ct. 583, 42 L.Ed. 1012, and Darby v. Daniel, S.D.Miss., 1958, 168 F.Supp. 170 which the majority (see Part XII) stresses as a holding "on the face" are of little consequence as precedents or for persuasiveness.

The extended preoccupation of the majority (see Part X) with the thesis that voter qualification is exclusively committed to the states is neither accurate nor significant. All bends to the Federal Constitution.[105]

Nor could the elusive, undefinable "good moral character" test (see Part XIII) be employed as an intended or effective instrument of discrimination, no matter how well established it may be as a statutory requirement for professional or business permits. Standards of this kind, otherwise unobjectionable and often praiseworthy, must

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[104] Whether it will be able to establish all or any portion of the supporting facts either as a matter of fact-finding or as a matter of law, either in advance of, or after, trial (see Carss v. Outboard Marine Corp., 5 Cir., 1958, 252 F.2d 690; Camilla Cotton Oil Co. v. Spencer Kellogg and Sons, 5 Cir., 1958, 257 F.2d 162; Smoot v. State Farm Mutual Automobile Ins. Co., 5 Cir., 1962, 299 F.2d 525), I do not know. That question is not before me or the Court since the Government has not yet filed any motion for affirmative relief at this stage, either for summary judgment or otherwise. I intimate no judgment on these factual matters.

[105] See Judge Wisdom's detailed analysis of this shibboleth in United States v. State of Louisiana, D.C.La. (3-Judge), 1963, 225 F.Supp. 353, 358.

not be available to shield purposeful discrimination or conceal its exercise. The Fifth Circuit, for example, held a similar requirement for alumni recommendation unconstitutional since no Negro could hope to get such assistance from Mississippi white persons. Meredith v. Fair, 5 Cir., 1962, 298 F.2d 696, 701-702; and see also Ludley v. Board of Supervisors Louisiana State University, E.D.La., 130 F.Supp. 900, aff'd, 5 Cir., 252 F.2d 372, cert. denied, 1958, 358 U.S. 819, 79 S.Ct. 31, 3 L.Ed.2d 61. And certainly a close look must be given to a test when the whole public—[fol. 3190] from the publication of the applicant's name—is invited to challenge the "good moral" character of a Negro. If First Amendment rights of freedom of association and expression are protected against such publicity (see note 28, supra), then surely Fifteenth Amendment rights are just as deserving.

Finally, nothing in Lassiter v. Northhampton County Board of Elections, 1959, 360 U.S. 45, 79 S.Ct. 985, 3 L.Ed.2d 1072, affords any basis for supposing that either a literacy test or an understanding test is free from attack when purposefully chosen to *deny*, not grant voter privileges.

Discrimination against Negroes, on the Government's theory, has not resulted from discriminatory administration of valid laws. It has happened because it was meant to happen. To eradicate this evil, the attack need not be made piece by piece. It may be made by a frontal assault on the whole structure. What the Government is saying is that Mississippi knows that this was the purpose, and now all it wants is for the Court to see what "all others can see and understand," [106] since there "is no reason [fols. 3191-3197] why [courts] should pretend to be more ignorant or unobserving than the rest of mankind." [107]

I therefore respectfully dissent.

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[106] Chief Justice Taft in Bailey v. Drexel Furniture Co., 1922, 259 U.S. 20, 37, 42 S.Ct. 449, 66 L.Ed. 817.

[107] Affiliated Enterprises v. Waller, 1 Terry 28, 1 Del. 28, 5 A.2d 257, 261.

[fol. 3198] IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action Number 3312

UNITED STATES OF AMERICA, Plaintiff,

v.

STATE OF MISSISSIPPI, ET AL, Defendants

Before CAMERON and BROWN, Circuit Judges, and Cox, District Judge.

COX, DISTRICT JUDGE, CONCURRING—Filed April 9, 1964

The majority opinion of the Court in this case, prepared by Honorable Ben F. Cameron, United States Circuit Judge, very forcefully and correctly decided this case, and I unconditionally joined in that opinion and in executing the consequent judgment of the Court, but wish to add my concurrence therein as herein expressed.

Initially, and as a fundamental proposition of universal application, the United States had no authority to institute or maintain this suit in the absence of express statutory authorization therefor. That position was readily admitted by counsel at the bar, but it is contended that 42 USCA §1971 expressly provided such necessary authorization for this suit. A careful analysis of that section of the statute will reveal the fallacy of that contention. Indeed, the United States was expressly granted authority to bring certain suits against certain *persons* for preventive relief against violation of certain Civil Rights of others. The state of Mississippi is simply not such a person as was envisioned by that statute. It was not designed, or intended to grant the national sovereign any carte blanche authority [fol. 3199] to arbitrarily and capriciously select any law, or package of laws of a state which it desired invalidated, and to have declaratory relief by a test in such manner of the constitutionality thereof.

The suability of the sovereign state of Mississippi by the United States in this case presents that serious question at the very threshold of this suit. Contrary to the dissent

herein, no question is presented, or relied on by anybody in this case as to any immunity afforded a state by the 11th Amendment to the Federal Constitution. It is perfectly clear in this case that the United States must find express authority in 42 USCA §1971(c) to bring this suit, or it is without authority in this case to sue the state of Mississippi. This Congressional Act very carefully limited the right of the United States to bring a suit under the act against a *person* offending another person by depriving him of a right under the act, and for *preventive* relief. Ordinarily, the term "person" does not include a state or a municipal corporation, unless the statute itself makes the intention to do so very clear. Significantly, the last paragraph of §1971(e) contains its own lexicon. Congress made it clear that the word "vote" meant all things prerequisite to voting, including registration where necessary to vote, and casting the ballot and having it counted. Other well known words and phrases were specifically defined to comply with the legislative intent. The Congress knew that a state is ordinarily not considered a person within the purview of legislation of this character, and it did not deem it proper to carry out the legislative intent to make this act specifically to extend to a sovereign state as a person. This act clearly provides that: "Whenever *any person* has engaged, or there are reasonable grounds to believe that *any person* is about to engage in any act or practice which would [fol. 3200] deprive *any other person* of any right or privilege secured by subsection (a) or (b) of this section," then the Attorney General may institute civil action in the name of the United States for *preventive* relief under this act. Then Congress provided that in such a suit the United States shall be liable for costs *the same as a private person.* The act provides that if a state official has violated either paragraph (a) or paragraph (b) of that section that the state may be made a party to the suit (not for any relief against it) but as a mere conduit or procedural vehicle to preserve jurisdiction where offending officials have died, or resigned as happened in the Alabama situation which was met by this provision in the act. But the state of Mississippi is simply not a *person* within any concept of this act, and is not suable in this case. In *Sims* v. *U.S.*, 359 US 641; 79 S.Ct. 641, it is said that "whether the term

'person' when used in a Federal statute includes a state cannot be abstractly declared, but depends upon its legislative environment, *Ohio* v. *Helvering,* 292 US 360, 370; 54 S.Ct. 725, 727; *State of Georgia* v. *Evans,* 316 US 159, 161; 62 S.Ct. 972, 793." In *Monroe* v. *Pape,* 365 US 167; 81 S.Ct. 473, the Court held that a municipal corporation was not within the ambit of a statute which related to a person who might deprive a citizen of a civil right under 42 USCA §1983. That same rule was followed by the Court in *Egan* v. *City of Aurora,* 365 US 514; 81 S.Ct. 684, where the Court held that a municipality is not a person within the meaning of said act. Then in *US* v. *Alabama,* 171 F. Supp. 720, the district court in speaking of the 1957 Civil Rights Act, said that a person did not include or mean a sovereign state. On appeal of that decision in *US* v. *Alabama,* (5CA) 267 F.2d 808, the Court very strongly reiterated and amplified that same view. The Court in that case said that the state of Alabama was not a person within the purview of the 1957 Civil Rights Act appearing as 42 USCA §1971(c). [fol. 3201] Yet, almost a year later when the present act was amended in 1960, no attempt was made by Congress to make any change in the first two sentences of this act which appeared exactly in the same verbiage as in the 1957 Civil Rights Act.

A statutory intent to authorize the United States to sue a sovereign state is not to be lightly inferred. Such authority must be found in a statute in the very clearest terms before a Federal Court will assume jurisdiction of a sovereign state. In *US* v. *Alabama,* supra, Judge Hutcheson as chief judge, speaking for the Court at page 811, said: "Absent such specific conferring of jurisdiction, a federal court would not, indeed could not assume jurisdiction over a sovereign state without a precedent determination that, though the jurisdiction had not been expressly conferred, the language of the invoked statute carried the necessary, the unavoidable implication that the congress upon the gravest considerations and after the utmost thought and deliberation had intended to and did confer it."

The State Board of Election Commissioners (composed of the Governor, the State Attorney General and the Secretary of State) are assigned statutory duties in connection

with the preparation of forms of applications which the registrars use in testing the qualifications of an applicant to register to vote. These commissioners are thus acting in a legislative capacity in the discharge of such function and are, therefore, not ordinarily amenable to suit. But their duties have been discharged when they release these forms of applications for use by the registrars in the counties; and the Mississippi State Board of Election Commissioners thereafter have absolutely nothing to do with the registration of voters, or the conduct of any election. The complaint as to the state of Mississippi, and as to said [fol. 3202] State Board of Election Commissioners is, therefore, clearly without any possible merit on its face. The complaint does not aver that the State Board of Election Commissioners have done anything, or threatened to do anything other than prepare those official registration blank forms exactly as directed by the Mississippi Legislature.

The gravamen of this complaint in its entirety is that two sections of the Mississippi Constitution, and six state statutes implementing those constitutional sections are all unconstitutional and void in the opinion of the United States. The acts and laws under attack in this case are Mississippi Constitution 1890, §241–A [1] and §241 [2] and six state statutes

[1] §*241–A*. In addition to all other qualifications required of a person to be entitled to register for the purpose of becoming a qualified elector, such person shall be of good moral character. The Legislature shall have the power to enforce the provisions of this section by appropriate legislation.

[2] §*244*, Every elector shall, in addition to the foregoing qualifications be able to read and write any section of the Constitution of this State and give a reasonable interpretation thereof to the county registrar. He shall demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government. The person applying to register shall make a sworn, written application for registration on a form to be prescribed by the state board of election commissioners, exhibiting therein the essential facts and qualifications necessary to show that he is entitled to register

(all referred to herein as statutes) designated as H.B. 900 (Chapter 570, Mississippi Laws 1962),[3] H.B. 901 (Chapter

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and vote, said application to be entirely written, dated and signed by the applicant in the presence of the county registrar, without assistance or suggestion from any person or memorandum whatever; provided, however, that if the [fol. 3203] applicant is unable to write his application by reason of physical disability, the same, upon his oath of such disability, shall be written at his unassisted dictation by the county registrar. Any new or additional qualifications herein imposed shall not be required of any person who was a duly registered and qualified elector of this state prior to January 1, 1954. The Legislature shall have the power to enforce the provisions of this section by appropriate legislation.

[3] §1. Person not to register unless he can read and write. A person shall not be registered unless he be able to read and write any section of the constitution of this state and give a reasonable interpretation thereof to the county registrar. He shall demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government; he shall also demonstrate to the county registrar that he is a person of good moral character. The person applying to register shall make a sworn, written application for registration on a form prescribed by the state board of election commissioners, exhibiting therein the essential facts and qualifications necessary to show that he is entitled to register and vote, said application to be entirely written, dated and signed by the applicant in the presence of the county registrar, without assistance or suggestion from any person or memorandum whatsoever; provided, however, that if the applicant is unable to write his application by reason of physical disability, the same, upon his oath of such disability, shall be written at his unassisted dictation by the county registrar. As originally enacted each provision is and it is further declared to be mandatory and not directory; no application should have been and shall not be approved or the applicant declared qualified to register to vote unless all blank spaces in the application and the oath are properly and responsively filled out by the applicant; and

574, Mississippi Laws 1962),[4] H.B. 905 (Chapter 569, Mississippi Laws 1962),[5] H.B. 904 (Chapter 573, Mississippi

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the oath, as such, shall be signed by the applicant; and the application, as such, shall be signed separately by the applicant at the places thereon provided for applicant's signature. Provided, however, the provisions herein imposed shall not be required of any person who was a duly registered and qualified elector of this state prior to January 1, 1954; except that from and after the effective date of this act no person shall be permitted to register unless he demonstrates to the county registrar that he is of good moral character as required by the provisions of §241–A of the Constitution of Mississippi. §2. Should any provision of this act be held to be unconstitutional or otherwise invalid for any reason, such holding shall not be construed to affect the validity of any other part or portion of this act.

[4] §1. That Section 3232, Mississippi Code of 1942, Recompiled, be and the same is hereby amended to read as follows: §3232. Form of poll book. The poll book of each election district shall have printed or written at the top of each page words to designate the election district for which it is to be used, and shall be ruled in appropriate columns, with printed or written headings, as follows: Date of registration; name of electors; age; and a number of blank columns for the dates of elections. All who register within four months before any regular election shall be entered on the poll books immediately after such election, and not before, so that the poll books will show only the names of [fol. 3204] those qualified to vote at such election. When election commissioners determine that any elector is disqualified from voting, by reason of being delinquent for poll tax, removal from the precinct, or other cause, that fact shall be noted on the registration book and his name shall be erased from the poll book. After disqualification for delinquency has been removed in subsequent years, the name of such elector shall be reinstated on the poll book without re-registration, and that fact shall be noted in the registration book.

[5] §1. The state board of election commissioners shall, as soon as practicable and thereafter at such times as it may

[Footnote 5 continued on page 1617]

[Footnote 5 continued from page 1616]

deem advisable, consistent with the Constitution, prepare a series of application blanks, including the oath of the person offering to register, in compliance with Section 242 of the Constitution of this state, and including blank forms for furnishing of information, showing date of application, which shall be the date of registration if such applicant be approved for registration; name of apalicant; age; occupation; where business carried on; if employed, by whom; place of residence; date such residence began; previous place of residence; what oath applicant takes; if more than one person of the same name in precinct, by what name applicant wishes to be called; whether applicant has been convicted, and if so, when and where, of any of the crimes referred to in Section 241 of the Constitution of Mississippi, which are bribery, theft, arson, obtaining money under false pretenses, perjury, forgery, embezzlement and bigamy, and the moral character of applicant; all designed to test the ability of applicants for registration to vote to read and write any section of the Constitution of this state and give a reasonable interpretation thereof, and demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government; and to demonstrate to the county registrar that applicant is a person of good moral character as required by Section 241–A of the Constitution of Mississippi. Such applications shall be designed to exhibit the essential facts and qualifications necessary to show that such person is entitled to register and vote. Copies of such application blank forms shall be delivered to the county registrar of each county, and such copies shall be supplied to each county registrar as needed. The oath required by Section 242 of the Constitution shall be administered by the registrar. The board of supervisors is authorized to make proper allowances for office supplies reasonably necessary by this act. If no appeal has been or is taken as provided by law from the ruling of the registrar upon any application for registration, or if any application for registration is abandoned or waived by the applicant therein by making another application for registration before any final judgment or

[Footnote 5 continued on page 1618]

[Footnote 5 continued from page 1617]

decision has been rendered on any prior application, or otherwise waived or abandoned same, the registrar is not required to retain or preserve any record made under the provisions hereof. §2. Registrar to register voters. The registrar shall register on the registration books of the election district of the residence of such person anyone appearing before him, and being, upon examination found, in compliance with Section 244 of the Constitution, as amended, and in compliance with Section 241-A of the Constitution of Mississippi to be entitled to be registered as an elector, upon such person taking and subscribing the [fol. 3205] oath required by Section 242 of the Constitution of Mississippi; but persons who may be entitled to register under the provisions of Section 251 of the Constitution of Mississippi, who would be otherwise disqualified by reason of age, may take the oath as modified by that circumstance, and the subscription of the oath shall be by the elector writing his name in the proper column in the registration book. §3. Form of registration books. The registration books are to be in the following form: They shall have printed at the top of the pages the oath prescribed by Section 242 of the Constitution of Mississippi, and beneath shall be ruled appropriate columns, the headings of which shall be printed respectively, as follows, viz: date of registration; names of electors; age; occupation; where business carried on; if employed, by whom; place of residence in the district; what oath does elector take? If more than one person of same name in district, by what appellation does elector wish to be called? Has the elector met all of the requirements of Section 244 of the Constitution of Mississippi, as amended? Has the elector met all of the requirements of Section 241-A of the Constitution of Mississippi? Signature of elector; remarks. In the column headed "What oath does elector take?" the registrar shall write the word "general," if the elector take the general oath prescribed, the word "minister's," or "minister's wife," if he or she take the oath as modified by the parenthetical sentence thereon; and the words "special as to age," if the elector will, as provided in Section 251 of the Constitution of Mississippi, become of age before the election next after he proposed to

[Footnote 5 continued on page 1619]

Laws 1962),[6] H.B. 822 (Chapter 572, Mississippi Laws

[Footnote 5 continued from page 1618]

register; and in the column headed, "Has the elector met, etc.?" if he has met all the requirements of Section 244 of the Constitution, as amended, and Section 241–A of the Constitution of Mississippi, the word "yes" shall be entered. And provided further, that when a new registration is ordered in a county that new registration books shall be purchased to comply with the form prescribed herein. And provided further, that persons registering in any such new registration books who were duly registered and qualified electors of this state prior to January 1, 1954, shall be entitled to register in such new registration books in accordance with the requirements of law in existence on said date; except that all persons registering after the effective date of this act shall be of good moral character as required by Section 241–A of the Constitution of Mississippi. §4. Should any provision or section of this act be held to be unconstitutional or otherwise invalid for any reason, such holding shall not be construed to affect the validity of any other part or portion of this act.

[6] §1. The sufficiency and the truthfulness of the statements made in the application to register to vote, and the contents thereof, and the good moral character of an applicant to register to vote are material, and this act is adopted to further enforce he requirements to register to vote as set out in the Constitution and laws of the state of Mississippi. §2. Any qualified elector of the county may challenge the good moral character of any applicant and any other requirement of any applicant to vote within fourteen (14) days after the date of the last publication of the name and address of such applicant by filing with the registrar an affidavit in duplicate setting forth facts upon which the challenge is based. Upon the filing of any such challenge the registrar shall within seven (7) days thereafter, exclusive of the date of the filing of such challenge, send to applicant by certified mail, addressed to him at the address shown on the application, one copy of such affidavit, and notice [fol. 3206] of the date, time and place where the registrar will hold an administrative hearing to determine the suffi-

[Footnote 6 continued on page 1620]

[Footnote 6 continued from page 1619]

ciency of the application or challenge. §3. The registrar, who is an administrative officer of the county in which he serves as registrar, is hereby vested with full power and authority to hold and conduct such administrative hearing and render his decision thereon; he may render his decision at the completion of the hearing or may take the matter under advisement just as a court may do. §4. Such hearing shall be held in the office of the registrar or at some other place designated by the registrar in the county courthouse, and shall be set within a reasonable time after the date of the mailing of said notice. If there be two (2) judicial districts in the county, then the hearing shall be had in the courthouse of the judicial district in which the application to register is made. On his own motion or for good cause shown, the registrar may change the date and time of such hearing. At such hearing by the registrar he may hear oral and documentary evidence in support of, in challenge of, or denial of, the sufficiency of the application, the good moral character of the applicant, and as to any other requirement which applicant must meet in order to be qualified to register to vote. §5. The registrar may issue subpoenas to be served by the Sheriff of the county to secure their attendance as witnesses and the production of documents at such hearing. Obedience to any such subpoena may be secured by the registrar by filing with the Circuit Judge, in term time or in vacation, a petition seeking enforcement, and the person subpoenaed shall obey the order of the Circuit Judge made therein. The Circuit Judge, in vacation or in term time, is hereby vested with jurisdiction to hear and determine such petition, make proper orders thereon and issue appropriate process, and said petition shall be heard at such time and place as he may specify on five (5) days' notice to all parties. §6. The registrar shall administer to the witnesses who testify in said administrative hearing the same oath as is used in the trial of cases in the Circuit Court. §7. The registrar shall require all testimony taken before him to be taken down by a competent stenographer or reporter, and a transcript thereof shall be filed with and retained by the registrar as a record of his office. All costs of such proceedings may be taxed by the

[Footnote 6 continued on page 1621]

[Footnote 6 continued from page 1620]

registrar in accord with the manner and practice pertaining to costs in the Chancery Court under the laws of this state. §8. If the decision of the registrar be that the applicant is qualified to register under the Constiution and laws of the state of Mississippi, he shall be forthwith registered; but if the registrar finds that applicant is not qualified under said Constitution and laws to be registered, he shall not register the applicant but shall mark his application "failed;" but if he finds that applicant is not of good moral character he shall so endorse the application and state the facts upon which the finding of lack of good moral character is based. §9. At such hearing held by the registrar, applicant and any person or persons challenging the truthfulness or sufficiency of the application may be represented by counsel, but applicant and any challenger may appear pro se in and on his own behalf if they choose. Witnesses may be examined or cross-examined as in trials in the Circuit Court. §10. An appeal may be taken to the Board of County Election Commissioners by any persons against whom the registrar may decide within the same time and in the same manner as is now provided for an appeal from registration or denial of registration by the registrar. §11. If the appli- [fol. 3207] cant or any challenger does not appear at the time and place set by the registrar for the hearing of any challenge, the registrar may, in his discretion, reset the hearing or may proceed and determine whether applicant is or is not, as the case may be, qualified under the Constitution and laws of the state of Mississippi to register to vote. The person or persons against whom the registrar decides may appeal as above provided just as if a hearing had been held. §12. Strict rules of evidence shall not be enforced at the hearing herein provided for. Witnesses may be examined by the applicant or his attorneys, and by the challenger or challengers of their attorneys. §13. The provisions of this act are intended to provide an additional administrative method whereby third parties may challenge the sufficiency of any application to register and the good moral character of an applicant, and are not intended to affect the right, duty and authority of the registrar to determine such qualifications, as now provided by law, if no challenge is made by any third party.

1962),[7] and H.B. 903 (Chapter 571, Mississippi Laws 1962)[8]

[7] §1. Within ten (10) days after the receipt by the registrar of any application to register to vote and before consideration is given to the sufficiency of the application, the registrar shall deliver for publication in a newspaper hereinafter described the name and address of such applicant as stated in said application and shall cause same to be published once each week for two (2) consecutive weeks in a newspaper having general circulation in the county where such applicant has applied to register, but if no such newspaper is published in such county, then publication shall be made in some newspaper published in an adjoining or other county but of general circulation in the county of the residence of the applicant. §2. The said name and address shall be published in said newspaper under a heading entitled: "Applicants for registration to vote." When said publication shall have been completed, proper proof of publication shall be furnished to the registrar and same shall be preserved as a record of his office. The cost of the publication and proof thereof shall be paid by the county out of its general fund at the rate for legal notices. §3. If within fourteen (14) days, exclusive of the date of the last publication of the name or names aforesaid, after the date of the last publication, no qualified elector of the county, other than the registrar, shall have challenged, in the manner prescribed by law, the good moral character of applicant and any other requirement which applicant must meet in order to be qualified to register to vote, the registrar shall within a reasonable time, under the circumstances, determine whether applicant has complied with the Constitution and laws of the state of Mississippi to entitle him to register to vote.

[8] §1. When the registrar shall have determined that an applicant to register to vote has qualified to register under the Constitution and laws of the state of Mississippi, he shall endorse upon the application the word "passed," or a word or words of equivalent meaning, and the applicant shall be entitled to register upon his request for registration made in person to the registrar, or deputy registrar, if a deputy registrar has been appointed. As is now re-

set out in the footnotes for ready access thereto and analysis thereof.

[fol. 3208] The complaint as to the registrar of Amite County, the registrar of Claiborne County, the registrar of Pike County (all within the Southern District of Mississippi, but in different divisions of this district; and against

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quired by law, no person other than the registrar or a deputy registrar shall register any applicant. It shall be the responsibility of an applicant for registration to make inquiry of the registrar, or the deputy registrar, if a deputy registrar has been appointed, to determine whether such applicant has passed and is qualified to register. §2. If applicant be of good moral character, but has not otherwise complied with the Constitution and laws of this state to entitle him to vote, then the registrar shall endorse upon the application the word "failed," without specifying the reason or reasons therefor, as so to do may constitute assistance to the applicant on another application. §3. If applicant is otherwise qualified to register, but fails to demonstrate to the registrar that applicant is of good moral character and the registrar so finds, the registrar shall endorse upon the application the words "not of good moral character," and shall state the facts or reasons why he finds applicant not to be of good moral character. §4. If applicant is not otherwise qualified under said Constitution and laws and fails to demonstrate that he is of good moral character, then the registrar shall endorse upon the application the word "failed," and may endorse thereon the words "not of good moral character," but if he endorses the latter on the application he shall state the facts and reasons why he finds applicant not to be of good moral character.

Note: The foregoing footnotes and this opinion refers to the House Bills under attack as set out in the complaint by reference to the Chapter in the Session Laws where they appear and are the same as those referred to as being sections of the Mississippi Code 1942 as contained in the majority opinion. Each section of the Session Acts now appears as a separate section of the Code though such references are to the same laws.

the registrar of Coahoma County, the registrar of LeFlore County and the registrar of Lowndes County, all in different divisions of the Northern District of Mississippi), presents a much more difficult question. Surely, §1971(c) authorized the United States to bring a suit against a registrar for any violation, or any threat of violation of the Civil Rights of a citizen through discrimination against that citizen in any manner, or to any extent by any sort of device however clever or concealed it may be.

[fol. 3209] It must be remembered that this is not a voting case. It is a registration case, but registration is a condition precedent to voting in Mississippi and the United States, as plaintiff, may seek preventive relief against a registrar as a person (as an official, indeed, but not as a private individual) under §1971(c) on the basis that such registrar is doing or is threatening to do something in violation of 42 USCA §1971(a). It is not stated in the complaint that either one of these registrars ever did, or threatened to do anything in violation of that statute, but it is stated that these registrars were literally administering and enforcing, as written, this package of eight laws which this suit was filed to invalidate. Significantly, at the bar, counsel for the government disavowed any intention, or purpose by the suit to charge any discrimination whatsoever in the administration of these statutes by either one of these registrars. But paragraph 5 of the prayer in the original complaint requested the Court to: "Make a finding that the defendant county registrars have deprived negro citizens of the right secured by 42 USCA §1971(a); and that such deprivations have been and are pursuant to a pattern and practice of racial discrimination." Nowhere in the complaint is to be found any charge, or statement of any ultimate fact to the effect that either one of the sections of the Mississippi Constitution (§241-A and §244) or either one of the statutes implementing said sections (Mississippi Laws 1962, Chapters 569, 570, 571, 572, 573 and 574) were wrongfully, or erroneously or discriminatorily applied in any manner to any colored person. The gravamen and sole basis of the action and claim against these registrars is that they very properly administered and applied these laws which are alleged to be unconstitutional, and that thereby a claim has accrued to the United States. The plaintiff

[fol. 3210] accordingly asserts a demand, not for preventive relief, but for relief which could only be provided by a Mississippi legislative enactment as the opinion in chief sets forth and demonstrates.

Precisely, the claim against these registrars is that they are alleged to be engaged in administering these constitutionally invalid laws. The claim being more specifically that since only 5% of all adult negroes are registered, and since approximately 67% of all adult white citizens are registered, that the disparity and imbalance resulting from such circumstance will necessarily operate with discrimination against negroes. The fallacy of that claim is readily apparent. The law and its application and enforcement with an even hand, and completely without regard to race or color, simply defies any tenable criticism of its constitutional validity.

The case of *Darby* v. *Daniel,* 168 F. Supp. 170, was a carefully studied and prepared opinion of a three judge court composed of three distinguished Federal jurists from Mississippi. That decision settled the law as to the constitutionality of §244, Mississippi Constitution 1890 and implementing statutes and decided it correctly and no appeal was taken. There, the Court said: "We hold, therefore, that plaintiffs have wholly failed to establish that the amendment to §244 of the Mississippi Constitution of 1890 is void on its face, or because it was the product of base motives. We hold, on the other hand, that said amendment and the statutes passed in connection with it are valid on their face and in fact, are a legitimate exercise by the state of its sovereign right to prescribe and enforce the qualification of voters." That decision is decisive of most of the constitutional questions again presented here.

[fol. 3211] It is suggested that the literacy test in Mississippi is invalid because of the sweep of discretion thereby afforded a registrar in giving a test to an applicant. It will be noted that §244 [2] and the implementing statute [3] do not vest a registrar with any naked, unbridled power for arbitrary action on any application. Common sense, honesty, and fair play are the guiding stars of any genuine interpretation such as is contemplated here. In *Yick Wo* v. *Hopkins,* 118 US 356, 6 S.Ct. 1064, in referring to this laundry ordinance of the county which was designed to put

the Chinese laundryman out of business, the Court in condemning it said: "The power given to them is not confided to their discretion in the legal sense of that term, but is granted to their mere will. It is purely arbitrary, and acknowledges neither guidance nor restraint." Likewise in *Gomillion* v. *Lightfoot*, 364 US 339; 81 S.Ct. 125, the Court condemned a state statute which was designed and intended to change the boundary of Tuskogee so as to exclude substantially all negroes from the municipality. The Court said: "The complaint amply alleges the claim of race *discrimination*. Against this claim the respondents have never suggested, either in their brief or in oral argument, any countervailing municipal function which Act 140 was designed to serve." There is nothing in any statute before this Court which has any such intent, purpose or effect. Section 702, Mississippi Code 1942, captioned: "Rules—how words to be construed: All words and phrases contained in the statutes are used according to their common and ordinary acceptation and meaning; but technical words and phrases according to their technical meaning." The term good moral character requirement for citizenship is not a vague and meaningless term. It must be understood and construed according to the common acceptation of that phrase. It does not mean to define or require prudery or matchless excellence in moral conduct and behavior. It must [fol. 3212] be construed in its context as a requirement and qualification for suffrage that the applicant possess the common accepted standard of the average citizen for good moral character. A negro applicant need not measure up to the standard of the highest class citizen in his community, but the statutory standard would not be met by measuring up to the lowest standard of person who might enjoy the privileges of citizenship. The term does not lend itself readily to precise definition or exact standards. No comprehensive definition of good moral character has ever been attempted by any legislative body or judicial tribunal. Likewise, no court has ever comprehensively defined due process, probable cause, or due care, but down through the ages the courts and juries of this country have resolved thousands of controversies depending upon the meaning of those terms without a suggestion that the laws containing such nebulous terms were themselves invalid because of

lack of standards and guide lines in such laws for the application of such terms. The standard of fairness and reasonableness of an honest person in properly applying such test has been accepted generally by the judiciary as a full compliance with all of the requirements of due process and fair play.

The vagueness doctrine does not condemn the phrase even if it appeared in a criminal statute. Words like "moral turpitude," "good behavior," and other such ambiguous and nebulous phrases have appeared in our statutes for almost a century. The courts have understood them and applied them according to the common understanding and practices with respect thereto. In *Jordan* v. *DeGeorge*, 341 US 223; 71 S.Ct. 703, it is said: "We have several times held that difficulty in determining whether certain marginal offenses are within the meaning of the language under attack as vague does not automatically render a statute [fol. 3213] constitutional for indefiniteness. United States v. Wurzbach, 1930, 280 U.S. 396, 399, 50 S.Ct. 167, 168, 74 L.Ed. 508. Impossible standards of specificity are not required. United States v. Petrillo, 1947, 332 U.S. 1, 67 S.Ct. 1538, 91 L.Ed. 1877. The test is whether the language conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. Connally v. General Construction Co., 1926, 269 U.S. 385, 46 S.Ct. 126, 70 L.Ed. 322."

In *Brukiewicz* v. *Savoretti*, (5CA) 211 F.2d 541. This Circuit in affirming the findings of the examiner as to the good moral character of a petitioner for naturalization said: "A wide discretion is vested in the trial judge in determining whether or not 'good moral character' exists. It is to be determined as that term is generally understood, but petitioner's character must measure up to that of the average citizen in the community in which he resides before he is entitled to citizenship by naturalization."

In *Roth* v. *U.S.*, 354 US 476; 77 S.Ct. 1304, the question before the Court was the constitutionality of a criminal obscenity statute said to violate due process because too vague to support conviction for crime. "Many decisions have recognized that these terms of obscenity statutes are not precise. This Court, however, has consistently held that lack of precision is not itself offensive to the requirements

of due process. '***[T]he Constitution does not require impossible standards'; all that is required is that the language 'conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices***.' United States v. Petrillo, 332 U.S. 1, 7-8, 67 S.Ct. 1538, 1542, 91 L.Ed. 1877. These words, applied according to the proper standard for judging obscenity, already discussed, give adequate warning of the [fol. 3214] conduct proscribed and mark '***boundaries sufficiently distinct for judges and juries fairly to administer the law***. That there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls is no sufficient reason to hold the language too ambiguous to define a criminal offense***.' Id., 332 U.S. at page 7, 67 S.Ct. at page 1542. See also United States v. Harriss, 347 U.S. 612, 624, note 15, 74 S.Ct. 808, 815, 98 L.Ed. 989; Boyce Motor Lines, Inc. v. United States, 342 U.S. 337, 340, 72 S.Ct. 329, 330, 96 L.Ed. 367; United States v. Ragen, 314 U.S. 513, 523-524, 62 S.Ct. 374, 378, 86 L.Ed. 383; United States v. Wurzbach, 280 U.S. 396, 50 S.Ct. 167, 74 L.Ed. 508; Hygrade Provision Co. v. Sherman, 266 U.S. 497, 45 S.Ct. 141, 69 L.Ed. 402; Fox v. State of Washington, 236 U.S. 273, 35 S.Ct. 383, 50 L.Ed. 573; Nash v. United States, 229 U.S. 373, 33 S.Ct. 780, 57 L.Ed. 1232."

In *Marie Posusta* v. *U.S.*, (2CA) 285 F.2d 533, an applicant was denied citizenship for want of good moral character and the Court said: "Much has been written as to scope of that phrase, and, as was inevitable, there has been disagreement as to its meaning. However, it is settled that the test is not the personal moral principles of the individual judge or court before whom the applicant may come; the decision is to be based upon what he or it believes to be the ethical standards current at the time. United States ex rel. Iorio v. Day, 2 Cir., 34 F.2d 920, 921; Repouille v. United States, 2 Cir., 165 F.2d 152, 153; United States v. Francioso, 2 Cir., 164 F.2d 163; Schmidt v. United States, 2 Cir., 177 F.2d 450, 451, 452; Johnson v. United States, 2 Cir., 186 F.2d 588, 590, 22 A.L.R. 2d 240."

In *Kahm* v. *U.S.*, (5CA) 300 F.2d 78, in answer to an attack on a statute for vagueness it was said: "Nothing is more common than for a jury i na case involving charges of

negligence, as for example negligent homicide, to determine [fol. 3215] whether the proven conduct measures up to the standards of a reasonably prudent man." *United States* v. *Levine,* (2CCA) 83 F.2d 156, says: "Thus obscenity is a function of many variables, and the verdict of the jury is not the conclusion of the syllogism of which they are to find only the minor premise, but really a small bit of legislation ad hoc, like the standard care."

In *Gundling* v. *Chicago,* 177 US 183; 20 S.Ct. 633, 635, an ordinance of the city of Chicago submitted to the mayor the question of the fitness of a party to have a license to sell cigarettes. This question was submitted for the exercise of discretion of a judicial nature. No standards are contained in the ordinance to guide the mayor in his decision. The Court in upholding that ordinance against Federal attack said: "Regulations respecting the pursuit of a lawful trade or business are of very frequent occurrence in the various cities of the country, and what such regulations shall be and to what particular trade, business or occupation they shall apply, are questions for the state to determine, and their determination comes within the proper exercise of the police power by the state, and unless the regulations are so utterly unreasonable and extravagant in their nature and purpose that the property and personal rights of the citizens are unnecessarily, and in a manner wholly arbitrary, interfered with or destroyed without due process of law, they do not extend beyond the power of the state to pass, and they form no subject for Federal interference. As stated in *Crowley* v. *Christensen,* 137 US 86; 11 S.Ct. 13, 'the possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order and morals of the community.' Whether there is [fol. 3216] or is not a delegation of power by the common council to the mayor, is not in this case a Federal question. We have no doubt that the ordinance, so far as the objection above considered is concerned, was clearly within the power of the state to authorize, and must be obeyed accordingly." Again in *Breedlove* v. *Suttles,* 58 S.Ct. 205; 302 US 277, "The privilege of voting is not derived from the United States, but is conferred by the state and, save

as restrained by the 15th and 19th Amendments and other provisions of the Federal Constitution, the state may condition suffrage as it deems appropriate."

It has been repeatedly held that a state may properly require a literacy test as a condition precedent to suffrage. It is significant that in paragraph (e) of this same 42 USCA §1971 in the fourth unnumbered paragraph of that subparagraph, provision is made for a literacy test wherein the act provides: "Where proof of literacy or an understanding of other subjects is required by valid provisions of state law, the answer of the applicant, if written, shall be included in such report to the Court; if oral, it shall be taken down stenographically and a transcript included in such report to the Court." The United States cannot reconcile its complaint in this case with the announcement of the Supreme Court of the United States in *Minor* v. *Happersett,* 88 US 627; 21 Wall. 152, which held: "The United States has no voters in the states of its own creation. The constitution of the United States does not confer the right of suffrage upon anyone." The sole function of the United States in this voting area is to prevent discriminations under the 14th, 15th and 19th Amendments, but the general prerogative of a state is to condition suffrage as it sees fit. Mississippi has seen fit and deemed it proper to require a voter (regardless of his color, race or origin) to be possessed of good moral character. That [fol. 3217] requirement was inserted in the organic law of the state by its insertion in §241-A of the state constitution. It is complained that the term good moral character is not defined, and that no guide lines are supplied for its application, and that it is, therefore, a mere naked power subject to the capricious will of some irresponsible registrar. An examination of Chapter 573, Mississippi Laws 1962, will demonstrate to anybody that arbitrary action in the application of such test as to good moral character cannot exist in any administration of such law. A full hearing is provided for. The entire hearing must be recorded by a reporter. Quick and inexpensive appeal procedure is written into this act in addition to the general sections for appeals from the administrative rulings of the registrar. His rulings have no finality or conclusive-

ness and has no binding effect upon the election commissioners, or upon the circuit court on the second successive appeal.

Chapter 569, Mississippi Laws 1962 [6] is next assailed as being unconstitutional as being in conflict with 42 USCA §1974 which requires a registrar to preserve and retain certain records and papers coming into his possession relating to the registration processes for a period of twenty-two months. Section 1974 of that volume makes it a crime punishable by a fine and imprisonment for the destruction, concealment, mutilation or alteration of any such records. The pertinent part of the Mississippi act assailed provides that when no appeal has been taken by an applicant from a ruling of the registrar upon his application or when his application is waived or abandoned by making another application for registration before final judgment or decision is rendered on any prior application, then *"the registrar is not required to retain or preserve any record made under the provisions hereof."* Clearly, the state act does not require a destruction of such records but provides that they [fol. 3218] need not be kept for any state purpose. The Federal act simply intervenes and supersedes and overrides the state enactment to require the preservation of such records even under those circumstances for twenty-two months after an election to enable the Attorney General of the United States to investigate such records within said time after an election to determine and resolve any question therefrom relating to that election. The constitutionality of that state enactment under such circumstances cannot be gainsaid.

Actually, a suit against a registrar is basically a local action. It cannot be treated as in this case as a joint and several action against these six defendant county registrars for their entirely separate and distinct and disconnected activities done in the performance of their duties done solely in their respective counties. That is necessarily so in this case where no registrar in one of the counties has ever done any official act in any other county and could not legally do so. But if any fallacy in law exists in that observation, then every registrar in each of the eighty-four counties in this state would be necessary and indispensable parties to this suit, and for lack of jurisdiction of anyone

of whom, this Court could not proceed in their absence under Civil Rule 19.

This is not a diversity suit, and under the general venue statutes in this Court an action which is local in nature can be instituted only in the district of the residence of the defendant. The important considerations here, however, lie in the fact that the complaint nowhere charges that anyone of these registrars ever wrongfully did anything to deprive any negro of the right to register to vote in Mississippi. This is not a case wherein relief is sought [fol. 3219] against a registrar for discriminaton. These regstrars are charged with having applied the election laws of this sovereign state with an even hand to all citizens alike. It does not state a right of action of any kind against either one of these registrars. We are, therefore, undeniably faced with a complaint which fails to state a claim upon which any relief can be granted.

It is the clear and positive duty of the Court to consider and act upon motions like these before the Court in this case in limine to forestall any unnecessary delay or expense in protracted litigation. That is the unmistakable teaching of such cases as *Flanders* v. *Coleman,* 250 US 223, 228; 39 S.Ct. 472; *Kvos* v. *Associated Press,* 299 US 269, 278; 57 S.Ct. 197; *Rhode Island* v. *Mass.,* 12 Peters (31 US) 657, 718; *Walmac Co.* v. *Issacs,* (1CA) 220 F.2d 108, 111; *Battaglia* v. *General Motors Corp.,* (2CA) 169 F.2d 254, 256, cert. denied 355 US 887. This Court in its exercise of a sound judicial discretion received and considered the motions of the defendants for lack of jurisdiction and for failure to state a claim against the defendants upon which relief could be granted, as provided by Civil Rule 12(b), and properly sustained those motions for the reasons indicated when it became perfectly apparent to the Court that there was no possible substance in the complaint.

Civil Rule 8(a) requires a complaint to set forth "a short and plain statement of the claim showing that the pleader is entitled to relief" and "a demand for judgment for the relief to which he deems himself entitled." That rule permits the full application of the Notice Pleading Doctrine to any complaint filed under this rule in a Federal Court. Nevertheless, a pleader must state enough of the ultimate facts and circumstances relied upon to give the adversary

some reasonable notice under the rules of fair play [fol. 3220] to apprise him of the claim asserted against him. Mere conclusions of the pleader without some ultimate factual basis, and bare statistics without some casual connection assigned thereto other than shallow insinuations or unsupported inferences does not satisfy the Rule 8(a) requirement for a short and plain statement of the claim. The complaint contains thirty-five legal cap pages, arranged in seventy paragraphs, so it is not short and is equally and as certainly not plain. The Court in *Maguire* v. *Todd,* (5CA) (1952) 198 F.2d 60, affirmed a dismissal of a Civil Rights suit by the trial court for such infirmity and lack of substance as here. Cf: *Haley* v. *Childers,* (8CA) 314 F.2d 610, 613, where it is said: "But a mere conclusion of law or, as here, a naked conclusory allegation that a bargaining contract violates a Federal statute, has no efficacy and is wholly insufficient to confer jurisdiction upon the Federal Court where such allegation is unwarranted by the asserted facts and is contradictory to well pleaded facts." Stripped of such conclusions and deductions of the pleader, the complaint in this case simply seeks a declaratory judgment to have this court declare that two sections of the Mississippi Constitution 1890, and six statutes enacted in 1962 to implement those constitutional provisions as being invalid. United States counsel at the bar readily admitted in questions from the bench that discrimination was not involved in this suit; that the plaintiff relied upon §1971(c) as its sole authority for this suit, and that there was no authority for this suit unless expressly found in that act. There is an absolute dearth of any notice to be found anywhere in this complaint that any one of the defendants ever violated §1971(a), except by enforcing those state laws exactly as written. Attacks on those laws constituting the backbone of the entire election [fol. 3221] machinery of this state are predicated upon alleged constitutional weaknesses and infirmities in such laws themselves. It is not asserted that the state of Mississippi as a sovereign entity ever did anything to or against any citizen in the execution of such laws. Similarly, it is not asserted that the State Election Commissioners (composed of the Governor, Secretary of State and Attorney General) ever did anything other than prepare the form

of application for use of the applicants to register, and it is not asserted that their legislative action was not performed exactly as directed by the Legislature (Chapter 569, Laws 1962).[5] Likewise, it is not asserted that any one of the six county registrars in this suit ever did anything, or threatened to do anything other than administer those laws exactly as written.

A state has the right to declare all of the qualifications for voting within the state. The Federal government has no power or authority whatever in this field, except to prevent any discrimination among voters and any denial of the right of any citizen to vote on account of his race or color. Any extension of such power or authority of the Federal government would be an usurpation of state authority and an encroachment upon its sovereign domain. "The privilege to vote in a state is within the jurisdiction of the state itself, to be exercised as the state may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals, in violation of the Federal Constitution. The question whether the conditions prescribed by the state might be regarded by others as reasonable or unreasonable is not a Federal one." *Pope* v. *Williams,* 193 US 621; 24 S.Ct. 573. Speaking of the 15th Amendment, the Court in *Guinn & Beal* v. *U.S.,* 238 US 347; 35 S.Ct. 926, 930, the Court said: "Beyond doubt the Amendment does not take away from the state [fol. 3222] governments in a general sense the power over suffrage which has belonged to those governments from the beginning, and without the possession of which power the whole fabric upon which the division of state and national authority under the Constitution and the organization of both governments rest would be without support, and both the authority of the nation and the state would fall to the ground. In fact, the very command of the Amendment recognizes the possession of the general power by the state, since the Amendment seeks to regulate its exercise as to the particular subject with which it deals."

The United States answered interrogatories propounded by the defendants and took some depositions out of which the gossipy and irrelevant material found in the last half of the dissenting opinion herein was lifted. This material came from the thesis of a political science student at Ole

Miss who was writing for his Master's Degree, probably with no thought of playing such an important and prominent role in a court opinion. It is my firm conception of the law that statements subsequently or even precedently made by a member of a constitutional convention as to its purpose and intent could have no possible legal effect upon the validity of the convention product. What some state Supreme Court judge said in a book on the Mississippi Constitution as to the problems before the convention and its solution of the race problem in the state, certainly could not claim relevancy for its production.

The meaning, intent and purpose of an unambiguous act must be obtained from the act itself and not from the expressions of legislators or their committees. *Marche* v. *United States,* (5CCA) 126 F.2d 671. *United States* v. *Ogilvie Hardware Company,* (5CCA) 155 F.2d 577. It is never permissible to allow the discussions and views of legislators, [fol. 3223] friendly or unfriendly to such legislation, to disparage the validity of the ultimate work product of the legislative body. Any such impeachment in such manner of an unambiguous enactment would violate every principal of estoppel. The speeches of a legislator and the discussions of an enactment in committee, or even explanations of a witness before the committee as to the meaning, or intention or purpose of a statute is universally considered a very poor and impoverished source on which to rely to glean the legislative intent. A legislative body is presumed to say what it means, and to mean what it says. It is not within the province of any legislator or member of a constitutional convention to disparage the validity of an enactment of such legislative body by materials of such source. That does not mean to say that a Court should close its eyes and ears to facts and circumstances surrounding an enactment when clarity of expression makes it necessary to resort to extraneous evidence to determine the meaning and intent of an ambiguous statute, or constitutional section. But there is nothing hidden, or concealed or built-in to either of these statutes which would affect its validity. These statutes and constitutional sections here contain nothing invidious, or insidious, as in *Gomillion,* and in *Yick Wo,* so strongly relied on in the dissent. These election statutes are paragons of equity of treatinent of all citizens of both races alike.

According to the universal rule of statutory construction, there is the very strongest presumption in favor of the validity of each of these statutes. It is a strange philosophy which seizes upon every charge of discrimination and every claim of unconstitutionality in a statute as affording an opportunity if not an open invitation to invalidate such statute rather than sustain it. That presumption of validity [fol. 3224] must attend every statute throughout the trial of any case and be overcome only by the clearest and most convincing evidence to the contrary. In this case we are met with the extremely tenuous claim that these stautes in this case were bred and born in an atmosphere of inequity and invalidity and such evils inhere therein to invalidate them regardless of the fairness and impartiality with which such laws function and are administered. In *Fleming* v. *A. H. Belo Corporation*, (5CCA) 121 F.2d 207, in speaking of Congressional debates as reflecting upon the intent of Congress in an enactment, it is said: "It is just because of this fact, that legislation is compromise, that the view of the proponents and of the opponents, as to the purposes and effect of the legislative act, are never regarded as of value in a construction of it, and that it is settled law that statutes must be construed in accordance with the intent of the legislature as expressed in the language of the act as a whole. Its meaning may not be sought by the courts in the vague penumbrae of the wishes and desires of its proponents or its opponents as these are expressed in debates."

In *U.S.* v. *Trans-Missouri Freight Ass'n.*, 166 US 290, 17 S.Ct. 540, 550, the Court said: "That is, too, a general acquiescence in the doctrine that debates in congress are not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body. U.S. v. Union Pac R. Co., 91 U.S. 72, at page 79; Aldridge v. Williams, 3 How. 9-24, Taney, C. J.; Mitchell v. Manufacturing Co., 2 Story, 648, at page 653, Fed. Cas. No. 9,662; Reg. v. Hertford College, 3 C.B. Div. 693, at page 707. The reason is that it is impossible to determine with [fol. 3225] certainty what construction was put upon an act by the members of a legislative body that passed it by resorting to the speeches of individual members thereof. Those who did not speak may not have agreed with those who did, and those who spoke might differ from each other;

the result being that the only proper way to construe a legislative act is from the language used in the act, and, upon occasion, by a resort to the history of the times when it was passed."

Section 244, Mississippi Constitution 1890 was before the United States Supreme Court in 1898 in *Williams* v. *State of Mississippi*, 170 US 213; 18 S.Ct. 583, where it was complained that this 1890 convention by this §244 discriminated against the characteristics and the offenses to which negro members are prone; and that the section contained no standards for use by the registrar in applying his test to a citizen desiring to register to vote and that such discretion was thus unlimited and unreasonable and invalid. Yet, the Federal Supreme Court said that the Mississippi Constitution and laws passed pursuant thereto prescribing the qualifications of the voter and investing administrative officers with a large but sound discretion in determining what citizens have the necessary qualifications, cannot be held repugnant to the 14th Amendment merely on a showing that they operate as a discrimination against the colored race. As the complaint states [paragraph 50(b)] that §241–A, providing the good moral character requirement provided "an additional device with which registrars *could* discriminate against negro citizens who seek to register to vote." Such an averment is merely a suggestion of a possibility and nothing more which was discarded by the Court as ineffectual in *Williams* v. *State of Mississippi*, supra, to assail the validity of an act. Unless all of these eight state [fol. 3226] laws are facially invalid, the entire suit must must fail. Environment of a legislative body, even an evil intent of its membership and an unlawful purpose cannot serve to invalidate its legislation because thereof. It is not contended or even suggested that all unregistered white people who apply for registration do not have to comply with all of the requirements of this entire package of laws and satisfy and demonstrate to the registrar that they possess all of the qualifications and none of the disqualifications to register to vote. The fact that such laws may discommode or inconvenience a negro citizen or even work a hardship upon him to comply with such requirements to entitle him to register to vote, does not present any constitutional infirmity in such laws. The sovereign state of

Mississippi has the right to declare the qualifications of its citizens to register to vote, and every one of the qualifications in this state therefor have been repeatedly approved as valid. Substantially all requirements of the state of Mississippi for registration to vote have been uniformly approved without exception. *United States* v. *Atkins*, (5CA) 323 F.2d 733; *Trudeau* v. *Barnes*, (5CCA) 65 F.2d 563; cert. denied 290 US 659; *Lassiter* v. *Northhampton County Board of Elections*, 360 US 45; 79 S.Ct. 985.

This is not a school case. It is not a public accommodations case. These collateral questions may not be desperately drawn in to this case to confuse the sharp and clear issues as to the validity vel non of these Mississippi election laws. Statistics are resorted to frequently by those advocates who find themselves without substantial factual support in the genuine issues at hand. Here, much is made in the complaint and in the dissent about only 5% of the [fol. 3227] adult negro citizens being registered while 67% of the adult white citizens are registered. This Court judicially knows that negroes never manifested any substantial interest in registering or voting in Mississippi prior to a direct appeal to them from President Kennedy to do so. The weakness of such statistics is more apparent when it is realized that the complaint in this case does not undertake to link the registrars with any responsibility therefor and actually assigns no causal reason therefor; doubtless because it could not be truthfully said and certified that very many qualified negro citizens (possessing all of the qualifications and none of the disqualifications) had applied to some registrar to register and had been rejected. Surely, a qualified colored citizen who did not care to register and had never bothered about voting, could not expect to find his name on a registration roll unless he had exerted himself to do the necessary to put it there.

Since the registrars are thus parties to this suit instituted for the sole purpose of having these eight laws in a package declared unconstitutional, and since this case, therefore, does not involve an instance where anyone of these registrars has done anything to wrongfully deny any negro the right to register to vote in his county, it must follow that this Court has no jurisdiction of the sovereign state, and that the complaint fails to state a claim against the other

defendants upon which relief can be granted. If this suit were not an attack on the validity of these election laws, but only an attack on the enforcement thereof by these registrars, it would not be a three judge case as it is. It is said in *Sealy* v. *Department of Public Instruction of Penn., et al*, (3CA) 252 F.2d 898; cert. denied 78 S.Ct. 1139, "*Mere attack on regulations or method of enforcement of* [fol. 3228] *a statute is not sufficient to justify the interposition of a three-judge court.* Ex parte Bransford, 1939, 310 U.S. 354, 60 S.Ct. 947, 84 L.Ed. 1249, William Jameson & Co. v. Morgenthau, 1938, 307 U.S. 171, 59 S.Ct. 804, 83

The election machinery in this state contains every constitutional safeguard against any possible invalidity, including that of due process. Under §3217-03, Mississippi Code 1942, the registrar "who is an administrative officer of the county in which he serves as registrar" is vested with the full power and authority to conduct administrative hearings and render his decision upon any application to register at the time or he may take the matter under advisement as a court may do. Under §3217-04, Mississippi Code 1942, provision is made for hearings in the county on such applications to register. He may issue subpoenas for witnesses under §3217-05. Section 3217-07, Mississippi Code 1942, requires the registrar to have all testimony taken before him to be taken down by a competent reporter and a transcript thereof filed with and retained by him in his office. Section 3217-09, Mississippi Code 1942, provides that an applicant may appear in person or by counsel at such a hearing and may examine or cross-examine witnesses as in the circuit court. Section 3217-10, Mississippi Code 1942, provides for an appeal from any decision of the registrar to the Board of County Elections Commissioners. A general section of the Code provides for a further appeal to the circuit court and even to the Supreme Court of the state. Chapter 573, Mississippi Laws 1962 provides for an appeal to the circuit judge in term time or in vacation on the good moral character requirement of the act. Liberal provision for hearings and quick decisions [fol. 3229] on appeals differentiate this entire election system from others which have been condemned because a registrar's acts were unlimited as to discretion and con-

tained naked powers for abritrary and capricious actions which were final and conclusive.

These Mississippi election laws at bar fairly demonstrate upon their face the recognition and application of all of the rules of fair play and impartial treatment of all citizens of both races alike. The majority opinion and ensuing judgment in this case in its entirety is irrefragably correct and I concur therein.

William Harold Cox, United States District Judge.

[fol. 3230] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3312

UNITED STATES OF AMERICA, Plaintiff,

v.

STATE OF MISSISSIPPI, ET AL, Defendants

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed April 10, 1964

I. Notice is hereby given that the United States of America, the plaintiff above named, hereby appeals to the Supreme Court of the United States from the final order dismissing the complaint entered in this action on March 6, 1964.

This appeal is taken pursuant to 29 U.S.C. 1253.

II. The Clerk will please prepare a transcript of record in this cause for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the entire record below including all pleadings, motions, depositions, answers to interrogatories, transcripts of arguments, orders of the District Court, opinions of the District Court and this notice of appeal.

III. The following questions are presented by this appeal:

[fol. 3231] 1. Whether the complaint states a claim upon which relief could be granted.

2. Whether the defendant State of Mississippi is a proper party to this proceeding.

3. Whether the defendant State Board of Election Commissioners is a proper party to this proceeding.

4. Whether the defendants H. K. Whittington, Pauline Easley, J. W. Smith, Martha Turner Lamb, T. E. Wiggins and Wendell R. Holmes are proper parties to the proceeding.

5. Whether the United States is authorized to bring suit to declare invalid and enjoin the enforcement of State constitutional and statutory provisions as in violation of the Constitution and laws of the United States of America.

[fol. 3232] 6. Whether Sections 244 and 241A of the Mississippi Constitution, so much of Section 3209.6, Mississippi Code as permits the destruction of voting records, and House Bills 900, 903, 822 and 904 adopted in 1962 are invalid as in violation of the Fourteenth and Fifteenth Amendments to the United States Constitution and the Civil Rights Acts of 1957 and 1960.

/s/ Burke Marshall, Assistant Attorney General.
/s/ Robert E. Hauberg, United States Attorney.
/s/ John Doar, /s/ Harold H. Greene, /s/ Howard A Glickstein, Attorneys, Department of Justice, Washington, D. C. 20530

[fol. 3233] Certificate of Service omitted in printing.

[fol. 3234] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3312

[Title omitted]

MOTION FOR ORDER TO TRANSMIT ORIGINAL RECORD TO THE SUPREME COURT OF THE UNITED STATES—Filed April 10, 1964

Plaintiff in this cause hereby respectfully moves this Court to enter an order directing the original record, including all pleadings, motions, depositions, answers to interrogatories, transcripts of arguments, orders of the District Court and opinions of the District Court, to be transmitted to the Supreme Court in lieu of copies.

As reasons for this motion, plaintiff shows as follows:

1. Plaintiff has noted an appeal from the order entered on March 6, 1964, and has designated the entire record for transmission to the Supreme Court. The record is voluminous, and preparation of copies would be time-consuming and would entail considerable effort and expense.

2. Plaintiff intends to take all steps necessary to expedite the hearing of this case in the Supreme Court. Because this case involves the fundamental right to vote, the issues should be resolved by that Court as quickly as possible. [fol. 3235] 3. Under Rule 12(4) of the Revised Rules of the Supreme Court, the original papers may be inspected by the Supreme Court in lieu of copies if the presiding judge deems such inspection "necessary or proper." For reasons herein before stated, such inspection is "necessary" and "proper."

/s/ Burke Marshall, Assistant Attorney General.
/s/ Robert E. Hauberg, United States Attorney.
/s/ John Doar, /s/ Harold H. Greene, /s/ Howard A. Glickstein, Attorneys, Department of Justice, Washington, D. C. 20530

[fol. 3236] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Civil Action No. 3312

[Title Omitted]

ORDER DIRECTING TRANSMITTAL OF ORIGINAL RECORD—April 10, 1964

Plaintiff having designated the entire record in this case for use on appeal, and having filed with the Court a motion for an order directing that the original record be transmitted to the Supreme Court in lieu of copies, and it appearing to the Court that transmission of the original papers will avoid unnecessary expenses and expenditure of time, the Clerk is hereby directed to transmit the original record, including all pleadings, motions, depositions, answers to interrogatories, transcripts of arguments, orders of the District Court and opinions of the District Court, to the Supreme Court in lieu of copies, such original record to be returned to this Court after disposition of the appeal.

Ordered and adjudged this 10th day of April, A.D., 1964.

Harold Cox, United States District Judge.

[fol. 3237] Certificate of service, omitted in printing.

[fol. 3238] SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1963

No. 1097.

UNITED STATES, Appellant,

vs.

MISSISSIPPI, ET AL.

ORDER NOTING PROBABLE JURISDICTION—June 22, 1964

Appeal from the United States District Court for the Southern District of Mississippi.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is set for oral argument immediately following No. 1073.

☆ U. S. GOVERNMENT PRINTING OFFICE 1964 741677 149

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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. —

UNITED STATES OF AMERICA, APPELLANT

v.

STATE OF MISSISSIPPI, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the United States District Court for the Southern District of Mississippi, which is not yet reported, is set forth in Appendix B, *infra*, pp. 28–93.

JURISDICTION

This action was instituted by the United States on August 28, 1962, in the United States District Court for the Southern District of Mississippi under 42 U.S.C. 1971(d) and 28 U.S.C. 1345. The appellees are the State of Mississippi, the members of the State Board of Election Commissioners, and six county voting registrars. Because the complaint challenges, on constitutional grounds, certain provisions of the

State constitution and statutes relating to the qualification of voters, a district court of three judges was convened pursuant to 28 U.S.C. 2281. On March 5, 1964, before trial, the court dismissed the complaint upon the ground that it failed to state a claim upon which relief could be granted (App. c, *infra,* p. 180). A notice of appeal to this Court was filed on April 10, 1964. The jurisdiction of this Court to review the decision of the district court on direct appeal is conferred by 28 U.S.C. 1253. *A.F. of L.* v. *Watson,* 327 U.S. 582, 592.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth and Fifteenth Amendments to the Constitution of the United States, Section 1971 of Title 42 of the United States Code, Sections 241–A and 244 of the Mississippi Constitution, Section 3209.6 of the Mississippi Code and Chapters 570, 571, 572 and 573 of the Mississippi Laws of 1962 are reproduced in Appendix A, *infra,* pp. 13–27.

QUESTIONS PRESENTED

1. Whether the United States is authorized to bring suit to declare invalid and enjoin the enforcement of State laws and constitutional provisions relating to the right to vote as in violation of the Constitution and laws of the United States.

2. Whether Sections 244 and 241A of the Mississippi Constitution, so much of Section 3209.6, Mississippi Code, as permits the destruction of voting records, and Chapters 570, 571, 572 and 573 of the Mississippi Laws of 1962 (formerly House Bills 900, 903, 822 and 904) are invalid as in violation of the

Fourteenth and Fifteenth Amendments to the United States Constitution and the Civil Rights Acts of 1957 and 1960.

3. Whether the following are proper parties to the proceedings: the State of Mississippi; the members of the State Board of Election Commissioners; the named county voting registrars.

STATEMENT

The complaint challenges the constitutionality of certain constitutional and statutory provisions of the State of Mississippi dealing with voter qualification and election procedures. It is alleged that, since 1890, the State, by its laws and customs, has maintained and promoted white political supremacy and a racially segregated society by excluding Negroes from the ballot. The complaint describes in detail how this has been accomplished and traces the background of the constitutional and statutory provisions under attack.

The first claim challenges Section 244 of the Mississippi Constitution, as amended in 1955, and implemented since that time by registrars throughout Mississippi. Prior to its amendment, Section 244 prescribed as a qualification for voting the ability to read any section of the Mississippi Constitution, *or* to understand the same when read to the registrant, *or* to give a reasonable interpretation thereof. The 1955 amendment required of the voter that he be able to read and write any section of the Mississippi Constitution, *and* give a reasonable interpretation thereof to the county registrar, *and* demonstrate to him a reasonable understanding of the duties and obligations

of citizenship under a constitutional form of government. Persons who were registered to vote prior to January 1, 1954 (63% of the whites; 5% of the Negroes) were expressly exempted from the new and more stringent requirements.

The complaint asserts that Section 244 is unconstitutional because (1) it vests unlimited discretion in the registrar; (2) it perpetuates past discrimination by imposing new and more stringent requirements for registration following a long period of racial discrimination, while exempting from the new requirement most of the white citizens; (3) the interpretation test, which bears a direct relation to the quality of public education, works discriminatorily in a State where public educational facilities are and have been racially segregated and schools for Negroes are inferior; (4) the provision is vague and provides no objective standards for its administration; and (5) the requirement that prospective voters be able to interpret the provisions of the Mississippi Constitution (many of which are highly technical) is not reasonably related to any legitimate governmental objective.

As a second claim, the complaint challenges Section 241–A of the Mississippi Constitution. Enacted in 1960, this section provides that applicants for registration shall be of "good moral character." The complaint alleges that the provision is unconstitutional because (1) it automatically exempts most of the white citizens in Mississippi—who were registered during the period of discrimination—from its require-

ments;[1] and because (2) it provides no objective reference by which the county registrar may determine good moral character and thus permits registrars arbitrarily to reject Negro applicants.

The third claim asserts the unconstitutionality of a Mississippi statute, also enacted in 1960 (Section 3209.6, Mississippi Code, as amended), which permits voting registrars to destroy registration records. The ground of challenge is that the statute is inconsistent with Title III of the Civil Rights Act of 1960 (42 U.S.C. 1974) which requires registrars to retain and preserve the very records which, under the State statute, registrars are permitted to destroy.

The final claim attacks a package of legislation adopted by the Mississippi Legislature shortly after the Court of Appeals for the Fifth Circuit issued an injunction forbidding the registrar of Forrest County, Mississippi, from engaging in discriminatory practices in registration for voting (*United States* v. *Lynd,* 301 F. 2d 818 (C.A. 5), certiorari denied, 371 U.S. 893). This group of laws includes Chapters 570, 571, 572 and 573 of the Mississippi Laws of 1962 (formerly House Bills 900, 903, 822 and 904). Chapter 570 (Mississippi Code, § 3213, as amended) requires that applicants for registration, in order to qualify, complete a letter perfect application form without assistance. Chapter 571 (Mississippi Code,

[1] In May, 1962, a statute was adopted implementing Section 241-A (Section 3235 of the Mississippi Code) which provides: "* * * any person registering after the effective date of this act shall be of good moral character as required by Section 241-A of the Mississippi Constitution."

§ 3212.5) precludes registrars from advising applicants for registration as to the reason such applicant was rejected, on the ground that such advice would constitute assistance to the applicant. Chapters 572 and 573 (Mississippi Code, §§ 3212.7, 3217-01—3217-15) provide for publication of the names of applicants for registration, require an extended period of delay before it is determined whether an applicant is to be registered or denied registration, and permit any qualified elector to challenge the qualifications of any applicant whose name is published.

These statutory provisions are challenged as arbitrary and unreasonable. It is also claimed (1) that they exempt persons presently registered to vote—most of the white citizens—and impose more burdensome and stringent requirements on persons not registered prior to 1962; and (2) that this legislation provides no objective standards of administration.

By way of relief, the United States requested that the challenged constitutional and statutory provisions be declared unconstitutional; that the court find that the implementation of the invalid legislation has deprived Negro citizens of the right to vote on account of their race, and that the deprivations have been pursuant to a pattern or practice of racial discrimination within the meaning of 42 U.S.C. 1971(e); and that the court grant appropriate injunctive relief.[2]

[2] The district court was requested to issue an injunction enjoining the defendants from: (a) enforcing and giving any futher effect to any of the Constitutional and statutory provisions described in paragraphs 1 through 4 of the prayer of this Complaint; (b) engaging in any act which would deprive any citizen in the State of Mississippi of the right to register

On November 17 and 19, 1962, appellees filed motions requesting that the complaint be dismissed on the grounds that the court lacked jurisdiction and that the complaint failed to state a claim upon which relief could be granted. Appellees also propounded interrogatories directed at the factual allegations of the complaint. These were answered by the United States in great detail.[3]

The district court, Circuit Judge Brown dissenting, decided that the complaint failed to state a claim upon which relief could be granted and entered an order dismissing the complaint (App. C, *infra*, p. 180).

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and the right to vote without distinction of race or color; (c) engaging in any acts which would delay, prevent, hinder, discourage, or harass Negro citizens, on account of their race or color, from applying for registration and becoming registered voters in the State of Mississippi; (d) using the application form as an examination or test for Negro applicants, and to use such application form only as such form has been used in registering white applicants; (e) using any interpretation or understanding test which bears a direct relationship to the quality of public education afforded Negro applicants. In addition, the court was asked to order the defendants to register as a voter any Negro applicant for registration who possesses the following qualifications for registering to vote and none of the disqualifications as set forth in the Mississippi Constitution of 1890: (a) he is a citizen not less than 21 years of age; (b) he has been a resident of the state, county and election district for the period prescribed by Mississippi law; (c) he is able to read; (d) he has not been convicted of any disqualifying crimes enumerated in the Constitution and laws of Mississippi and is not insane.

[3] In addition, appellees moved for a more definite statement of the claims, separate trials or severance of the issues of discriminatory use by the local county registrars of the laws under attack.

The court found the complaint defective with respect to each of the defendants. Specifically, the court held that the complaint could not be maintained against the State of Mississippi because Section 601 (b) of the Civil Rights Act of 1960 (74 Stat. 90, now incorporated in 42 U.S.C. (Supp. IV) 1971(c)), which authorizes suits against a State, applies only where voting registrars have resigned and the State is the only possible defendant (App. B, *infra* pp. 39–55). The court decided that the complaint did not state a claim against members of the State Board of Election Commissioners because, in its view, that board does not enforce the statutes under attack and had done nothing to deny registration (App. B, *infra* pp. 56–58). With respect to the county registrars, the court held that they could not be sued in a joint action, but must be sued separately before a single judge (App. B, *infra* pp. 58–60).

The court also held that, regardless of the parties joined, this suit by the United States was unauthorized (App. B, *infra,* pp. 60–65). In the court's view, 42 U.S.C. 1971(c) permits an action to enjoin a particular official who would deny the franchise to a person qualified to vote as a matter of local law, but it does not empower the government to challenge directly discriminatory State laws.

Additionally, the court went on to consider each of the allegations of the complaint (App. B., *infra,* pp. 69–93). The opinion discusses the Mississippi constitutional and statutory provisions challenged and concludes that each of them is valid against the claim asserted.

THE QUESTIONS ARE SUBSTANTIAL

1. The importance of the case and of the questions tendered is obvious. The basic objective of the suit is to halt, and in some measure undo, a policy and practice of discrimination against Negro voters which, it is alleged, has persisted for three-quarters of a century throughout the State of Mississippi. The practical impact is enormous. Immediately at stake is the franchise of half a million potentially qualified Negro voters. As Judge Brown rightly stated in the dissenting opinion below, "[the] contest is a big one. It is no little controversy between one or more individual Negro voters and individual Registrars. It is between all Negro adults and the State. Indeed, it is between all citizens of the United States and the State. In that setting it is fitting that the protagonists appear to be what they really are—the United States and the State of Mississippi" (App. B, *infra*, p. 128).

The legal issues are likewise of great import. The State's constitutional and statutory provisions relating to registration and voting are directly challenged. The holding of the court below denies the right of the United States to attack State voting laws anywhere, and, in any event, to join the State itself as a party defendant. It is apparent that these rulings undermine the Civil Rights Acts of 1957 and 1960.

2. The decision below, dismissing the complaint on its face, is plainly erroneous. The ruling that the suit could not be maintained against the State of Mississippi when individual registrars were available as defendants flies in the face of the express declaration of Section 601(b) of the Civil Rights Act

of 1960 (74 Stat. 90, 42 U.S.C. (Supp. IV) of 1971(c)) that "the State may be joined as a party defendant." Similarly unfounded is the anomalous holding that the United States may challenge racial discrimination in voting if it results from the discretionary act of individual officials, but not if it is dictated by State law. The enabling statute (42 U.S.C. 1971(c)) specifically authorizes a suit to enjoin a deprivation of "any right or privilege secured by subsection (a) of [Section 1971]," which bars racial discrimination in the elective franchise "any constitution, law, custom, usage, or regulation of any State * * * to the contrary notwithstanding," and supports a direct attack on such discriminatory laws. See, *e.g.*, *Guinn* v. *United States*, 238 U.S. 347; *Myers* v. *Anderson*, 238 U.S. 368; *Lane* v. *Wilson*, 307 U.S. 268; *Davis* v. *Schnell*, 81 F. Supp. 872 (S.D. Ala.), affirmed *per curiam*, 336 U.S. 933.

The substantive ruling stands on no better footing. The complaint alleged that the challenged constitutional and statutory provisions were adopted with the express purpose of continuing the Negro as a voteless citizen; that there is a direct correlation between the inferiority of Negro education in Mississippi and the higher educational demands made upon prospective voters; that the effect of these laws is to "freeze in" the results of prior discrimination; that certain of the provisions contain no objective standards, are vague and indefinite, and vest unlimited discretion in registrars; and that, consistent with their purpose, there has been discriminatory administration of the voting laws in various counties of the State. These allega-

tions state a claim within the principles laid down in such cases as *Yick Wo* v. *Hopkins*, 118 U.S. 356; *Guinn* v. *United States, supra; Grosjean* v. *American Press Co.*, 297 U.S. 233; *Lane* v. *Wilson, supra; Schneider* v. *State*, 308 U.S. 147; *Davis* v. *Schnell, supra; Lassiter* v. *Northampton Election Board*, 360 U.S. 45; *Gomillion* v. *Lightfoot*, 364 U.S. 339; *NAACP* v. *Button*, 371 U.S. 415.

3. The holding below conflicts with the decision of the three-judge district court in *United States* v. *Louisiana*, 225 F. Supp. 353 (E.D. La.), pending on appeal. That case expressly upholds the authority of the United States to challenge State voting laws directly and to join the State in such a suit. Moreover, Louisiana registration provisions very similar to those here challenged were there struck down. The Louisiana Constitution requires an applicant for registration to "understand and give a reasonable interpretation of any section" of the Constitution of Louisiana or of the United States. What the court said in striking down this clause (225 F. Supp. at 356) seems equally applicable here:

> The understanding clause or interpretation test is *not* a literacy requirement. It has no rational relation to measuring the ability of an elector to read and write. It is a test of an elector's ability to interpret the Louisiana and United States Constitutions. Considering this law in its historical setting and considering too the actual operation and inescapable effect of the law, it is evident that the test is a sophisticated scheme to disfranchise Negroes. The test is unconstitutional as written and as administered.

CONCLUSION

For the foregoing reasons, probable jurisdiction should be noted and the case set down for plenary consideration.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

BURKE MARSHALL,
Assistant Attorney General.

LOUIS F. CLAIBORNE,
Assistant to the Solicitor General.

HAROLD H. GREENE,
HOWARD A. GLICKSTEIN,
Attorneys.

MAY 1964.

APPENDIX A

Constitutional and Statutory Provisions Involved

Constitution of the United States:

AMENDMENT XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * * * *

AMENDMENT XV

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

* * * * *

Federal Statute:

42 U.S.C. 1971:

(a) All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

* * * * *

(c) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. In any proceeding hereunder the United States shall be liable for costs the same as a private person.

Whenever, in a proceeding instituted under this subsection any official of a State or subdivision thereof is alleged to have committed any act or practice constituting a deprivation of any right or privilege secured by subsection (a) of this section, the act or practice shall also be deemed that of the State and the State may be joined as a party defendant and, if, prior to the institution of such proceeding, such official has resigned or has been relieved of his office and no successor has assumed such office, the proceeding may be instituted against the State.

(d) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

(e) In any proceeding instituted pursuant to subsection (c) of this section in the event the court finds that any person has been deprived on account of race or color of any right or privilege secured by subsection (a) of this section, the court shall upon request of the Attorney General and after each party has been given notice and the opportunity to be heard make a finding whether such deprivation was

or is pursuant to a pattern or practice. If the court finds such pattern or practice, any person of such race or color resident within the affected area shall, for one year and thereafter until the court subsequently finds that such pattern or practice has ceased, be entitled, upon his application therefor, to an order declaring him qualified to vote, upon proof that at any election or elections (1) he is qualified under State law to vote, and (2) he has since such finding by the court been (a) deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote, or (b) found not qualified to vote by any person acting under color of law. Such order shall be effective as to any election held within the longest period for which such applicant could have been registered or otherwise qualified under State law at which the applicant's qualifications would under State law entitle him to vote.

Notwithstanding any inconsistent provision of State law or the action of any State officer or court, an applicant so declared qualified to vote shall be permitted to vote in any such election. The Attorney General shall cause to be transmitted certified copies of such order to the appropriate election officers. The refusal by any such officer with notice of such order to permit any person so declared qualified to vote to vote at an appropriate election shall constitute contempt of court.

An application for an order pursuant to this subsection shall be heard within ten days, and the execution of any order disposing of such application shall not be stayed if the effect of such stay would be to delay the effectiveness of the order beyond the date of any election at which the applicant would otherwise be enabled to vote.

The court may appoint one or more persons who are qualified voters in the judicial district,

to be known as voting referees, who shall subscribe to the oath of office required by section 16 of Title 5, to serve for such period as the court shall determine, to receive such applications and to take evidence and report to the court findings as to whether or not at any election or elections (1) any such applicant is qualified under State law to vote, and (2) he has since the finding by the court heretofore specified been (a) deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote, or (b) found not qualified to vote by any person acting under color of law. In a proceeding before a voting referee, the applicant shall be heard ex parte at such times and places as the court shall direct. His statement under oath shall be prima facie evidence as to his age, residence, and his prior efforts to register or otherwise qualify to vote. Where proof of literacy or an understanding of other subjects is required by valid provisions of State law, the answer of the applicant, if written, shall be included in such report to the court; if oral, it shall be taken down stenographically and a transcription included in such report to the court.

Upon receipt of such report, the court shall cause the Attorney General to transmit a copy thereof to the State attorney general and to each party to such proceeding together with an order to show cause within ten days, or such shorter time as the court may fix, why an order of the court should not be entered in accordance with such report. Upon the expiration of such period, such order shall be entered unless prior to that time there has been filed with the court and served upon all parties a statement of exceptions to such report. Exceptions as to matters of fact shall be considered only if supported by a duly verified copy of a public record or by affidavit of persons having personal knowledge of such facts or by

statements or matters contained in such report; those relating to matters of law shall be supported by an appropriate memorandum of law. The issues of fact and law raised by such exceptions shall be determined by the court or, if the due and speedy administration of justice requires, they may be referred to the voting referee to determine in accordance with procedures prescribed by the court. A hearing as to an issue of fact shall be held only in the event that the proof in support of the exception disclose the existence of a genuine issue of material fact. The applicant's literacy and understanding of other subjects shall be determined solely on the basis of answers included in the report of the voting referee.

The court, or at its direction the voting referee, shall issue to each applicant so declared qualified a certificate identifying the holder thereof as a person so qualified.

Any voting referee appointed by the court pursuant to this subsection shall to the extent not inconsistent herewith have all the powers conferred upon a master by rule 53(c) of the Federal Rules of Civil Procedure. The compensation to be allowed to any persons appointed by the court pursuant to this subsection shall be fixed by the court and shall be payable by the United States.

Applications pursuant to this subsection shall be determined expeditiously. In the case of any application filed twenty or more days prior to an election which is undetermined by the time of such election, the court shall issue an order authorizing the applicant to vote provisionally: *Provided, however,* That such applicant shall be qualified to vote under State law. In the case of an application filed within twenty days prior to an election, the court, in its discretion, may make such an order. In either case the order shall make appropriate provision for the impounding of the applicant's ballot pending

determination of the application. The court may take any other action, and may authorize such referee or such other person as it may designate to take any other action, appropriate or necessary to carry out the provisions of this subsection and to enforce its decrees. This subsection shall in no way be construed as a limitation upon the existing powers of the court.

When used in the subsection, the word "vote" includes all action necessary to make a vote effective including, but not limited to, registration or other action required by State law prerequisite to voting, casting a ballot, and having such ballot counted and included in the appropriate totals of votes cast with respect to candidates for public office and propositions for which votes are received in an election; the words "affected area" shall mean any subdivision of the State in which the laws of the State relating to voting are or have been to any extent administered by a person found in the proceeding to have violated subsection (a) of this section; and the words "qualified under State law" shall mean qualified according to the laws, customs, or usages of the State, and shall not, in any event, imply qualifications more stringent than those used by the persons found in the proceeding to have violated subsection (a) of this section in qualifying persons other than those of the race or color against which the pattern or practice of discrimination was found to exist.

* * * * *

Constitution of the State of Mississippi (1 Mississippi Code Ann.):

§ 241–A. [Supp.] In addition to all other qualifications required of a person to be entitled to register for the purpose of becoming a qualified elector, such person shall be of good moral character.

The Legislature shall have the power to enforce the provisions of this section by appropriate legislation.

§ 244. Every elector shall, in addition to the foregoing qualifications be able to read and write any section of the Constitution of this State and give a reasonable interpretation thereof to the county registrar. He shall demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government.

The person applying to register shall make a sworn, written application for registration on a form to be prescribed by the state board of election commissioners, exhibiting therein the essential facts and qualifications necessary to show that he is entitled to register and vote, said application to be entirely written, dated and signed by the applicant in the presence of the county registrar, without assistance or suggestion from any person or memorandum whatever; provided, however, that if the applicant is unable to write his application by reason of physical disability, the same, upon his oath of such disability, shall be written at his unassisted dictation by the county registrar.

Any new or additional qualifications herein imposed shall not be required of any person who was a duly registered and qualified elector of this state prior to January 1, 1954.

The Legislature shall have the power to enforce the provisions of this section by appropriate legislation.

Mississippi Statutes: Mississippi Code, Section 3209.6:

The state board of election commissioners shall, as soon as practicable and thereafter at such times as it may deem advisable, consistent with the Constitution, prepare a series of application blanks, including the oath of the person offering to register, in compliance with Section 242 of the Constitution of this state, and including blank forms for furnishing of information, showing date of application,

which shall be the date of registration if such applicant be approved for registration; name of applicant; age; occupation; where business carried on; if employed, by whom; place of residence; date such residence began; previous place of residence; what oath applicant takes; if more than one person of the same name in precinct, by what name applicant wishes to be called; whether applicant has been convicted, and if so, when and where, of any of the crimes referred to in Section 241 of the Constitution of Mississippi, which are bribery, theft, arson, obtaining money under false pretenses, perjury, forgery, embezzlement and bigamy, and the moral character of applicant; all designed to test the ability of applicants for registration to vote to read and write any section of the Constitution of this state and give a reasonable interpretation thereof, and demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government; and to demonstrate to the county registrar that applicant is a person of good moral character as required by Section 241-A of the Constitution of Mississippi. Such applications shall be designed to exhibit the essential facts and qualifications necessary to show that such person is entitled to register and vote. Copies of such application blank forms shall be delivered to the county registrar of each county, and such copies shall be supplied to each county registrar as needed. The oath required by Section 242 of the Constitution shall be administered by the registrar. The board of supervisors is authorized to make proper allowances for office supplies reasonably necessary by this act.

If no appeal has been or is taken as provided by law from the ruling of the registrar upon any application for registration, or if any application for registration is abandoned or waived by the applicant therein by making another ap-

plication for registration before any final judgment or decision has been rendered on any prior application, or otherwise waived or abandoned same, the registrar is not required to retain or preserve any record made under the provisions hereof.

Mississippi Laws 1962, Chapter 570 (formerly House Bill 900, now incorporated in Miss. Code, § 3213):

§ 1. **Person not to register unless he can read and write.** A person shall not be registered unless he be able to read and write any section of the constitution of this state and give a reasonable interpretation thereof to the county registrar. He shall demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government; he shall also demonstrate to the county registrar that he is a person of good moral character.

The person applying to register shall make a sworn, written application for registration on a form prescribed by the state board of election commissioners, exhibiting therein the essential facts and qualifications necessary to show that he is entitled to register and vote, said application to be entirely written, dated and signed by the applicant in the presence of the county registrar, without assistance or suggestion from any person or memorandum whatever; provided, however, that if the applicant is unable to write his application by reason of physical disability, the same, upon his oath of such disability, shall be written at his unassisted dictation by the county registrar. As originally enacted each provision is and it is further declared to be mandatory and not directory; no application should have been and shall not be approved or the applicant declared qualified to register to vote unless all blank spaces in the application and the oath are properly and responsively

filled out by the applicant; and the oath, as such, shall be signed by the applicant; and the application, as such, shall be signed separately by the applicant at the places thereon provided for applicant's signature.

Provided, however, the provisions herein imposed shall not be required of any person who was a duly registered and qualified elector of this state prior to January 1, 1954; except that from and after the effective date of this act no person shall be permitted to register unless he demonstrates to the county registrar that he is of good moral character as required by the provisions of § 241–A of the Constitution of Mississippi.

§ 2. Should any provision of this act be held to be unconstitutional or otherwise invalid for any reason, such holding shall not be construed to affect the validity of any other part or portion of this act.

* * * * *

Mississippi Laws 1962, Chapter 571 (formerly House Bill 903, now incorporated in Miss. Code, § 3212.5):

§ 1. When the registrar shall have determined that an applicant to register to vote has qualified to register under the Constitution and laws of the State of Mississippi, he shall endorse upon the application the word "passed," or a word or words of equivalent meaning, and the applicant shall be entitled to register upon his request for registration made in person to the registrar, or deputy registrar, if a deputy registrar has been appointed. As is now required by law, no person other than the registrar or a deputy registrar shall register any applicant. It shall be the responsibility of an applicant for registration to make inquiry of the registrar, or the deputy registrar, if a deputy registrar has been appointed, to deter-

mine whether such applicant has passed and is qualified to register.

§ 2. If applicant be of good moral character, but has not otherwise complied with the Constitution and laws of this state to entitle him to vote, then the registrar shall endorse upon the application the word "failed," without specifying the reason or reasons therefor, as so to do may constitute assistance to the applicant on another application.

§ 3. If applicant is otherwise qualified to register, but fails to demonstrate to the registrar that applicant is of good moral character and the registrar so finds, the registrar shall endorse upon the application the words "not of good moral character," and shall state the facts or reasons why he finds applicant not to be of good moral character.

§ 4. If applicant is not otherwise qualified under said Constitution and laws and fails to demonstrate that he is of good moral character, then the registrar shall endorse upon the application the word "failed," and may endorse thereon the words "not of good moral character," but if he endorses the latter on the application he shall state the facts and reasons why he finds applicant not to be of good moral character.

* * * * *

Mississippi Laws 1962, Chapter 572 (formerly House Bill 822, now incorporated in Miss. Code, § 3212.7):

§ 1. Within ten (10) days after the receipt by the registrar of any application to register to vote and before consideration is given to the sufficiency of the application, the registrar shall deliver for publication in a newspaper hereinafter described the name and address of such applicant as stated in said application and shall cause same to be published once each week for

two (2) consecutive weeks in a newspaper having general circulation in the county where such applicant has applied to register, but if no such newspaper is published in such county, then publication shall be made in some newspaper published in an adjoining or other county but of general circulation in the county of the residence of the applicant.

§ 2. The said name and address shall be published in said newspaper under a heading entitled: "Applicants for registration to vote." When said publication shall have been completed, proper proof of publication shall be furnished to the registrar and same shall be preserved as a record of his office. The cost of the publication and proof thereof shall be paid by the county out of its general fund at the rate for legal notices.

§ 3. If within fourteen (14) days, exclusive of the date of the last publication of the name or names aforesaid, after the date of the last publication, no qualified elector of the county, other than the registrar, shall have challenged, in the manner prescribed by law, the good moral character of applicant and any other requirement which applicant must meet in order to be qualified to register to vote, the registrar shall within a reasonable time, under the circumstances, determine whether applicant has complied with the Constitution and laws of the State of Mississippi to entitle him to register to vote.

* * * * *

Mississippi Laws 1962, Chapter 573 (formerly House Bill 904, now incorporated in Miss. Code, §§ 3217-01—3217-15):

§1. The sufficiency and the truthfulness of the statements made in the application to register to vote, and the contents thereof, and the good moral character of an applicant to register to vote are material, and this act is

adopted to further enforce the requirements to register to vote as set out in the Constitution and laws of the State of Mississippi.

§ *2.* Any qualified elector of the county may challenge the good moral character of any applicant and any other requirement of any applicant to vote within fourteen (14) days after the date of the last publication of the name and address of such applicant by filing with the registrar an affidavit in duplicate setting forth facts upon which the challenge is based. Upon the filing of any such challenge the registrar shall within seven (7) days thereafter, exclusive of the date of the filing of such challenge, send to applicant by certified mail, addressed to him at the address shown on the application, one copy of such affidavit, and notice of the date, time and place where the registrar will hold an administrative hearing to determine the sufficiency of the application or challenge.

§ *3.* The registrar, who is an administrative officer of the county in which he serves as registrar, is hereby vested with full power and authority to hold and conduct such administrative hearing and render his decision thereon: he may render his decision at the completion of the hearing or may take the matter under advisement just as a court may do.

§ *4.* Such hearing shall be held in the office of the registrar or at some other place designated by the registrar in the county courthouse, and shall be set within a reasonable time after the date of the mailing of said notice. If there be two (2) judicial districts in the county, then the hearing shall be had in the courthouse of the judicial district in which the application to register is made. On his own motion or for good cause shown, the registrar may change the date and time of such hearing. At such hearing by the registrar he may hear oral and documentary evidence in support of, in challenge of, or denial of, the sufficiency of

the application, the good moral character of the applicant, and as to any other requirement which applicant must meet in order to be qualified to register to vote.

§ 5. The registrar may issue subpoenas to be served by the Sheriff of the county to secure their attendance as witnesses and the production of documents at such hearing. Obedience to any such subpoena may be secured by the registrar by filing with the Circuit Judge, in term time or in vacation, a petition seeking enforcement, and the person subpoenaed shall obey the order of the Circuit Judge made therein.

The Circuit Judge, in vacation or in term time, is hereby vested with jurisdiction to hear and determine such petition, make proper orders thereon and issue appropriate process, and said petition shall be heard at such time and place as he may specify on five (5) days' notice to all parties.

§ 6. The registrar shall administer to the witnesses who testify in said administrative hearing the same oath as is used in the trial of cases in the Circuit Court.

§ 7. The registrar shall require all testimony taken before him to be taken down by a competent stenographer or reporter, and a transcript thereof shall be filed with and retained by the registrar as a record of his office. All costs of such proceedings may be taxed by the registrar in accord with the manner and practice pertaining to costs in the Chancery Court under the laws of this state.

§ 8. If the decision of the registrar be that the applicant is qualified to register under the Constitution and laws of the State of Mississippi, he shall be forthwith registered; but if the registrar finds that applicant is not qualified under said Constitution and laws to be registered, he shall not register the applicant but shall mark his application "failed;" but if he finds that applicant is not of good moral char-

acter he shall so endorse the application and state the facts upon which the finding of lack of good moral character is based.

§ *9.* At such hearing held by the registrar, applicant and any person or persons challenging the truthfulness or sufficiency of the application may be represented by counsel, but applicant and any challenger may appear pro se in and on his own behalf if they choose. Witnesses may be examined or cross-examined as in trials in the Circuit Court.

§ *10.* An appeal may be taken to the Board of County Election Commissioners by any persons against whom the registrar may decide within the same time and in the same manner as is now provided for an appeal from registration or denial of registration by the registrar.

§ *11.* If the applicant or any challenger does not appear at the time and place set by the registrar for the hearing of any challenge, the registrar may, in his discretion, reset the hearing or may proceed and determine whether applicant is or is not, as the case may be, qualified under the Constitution and laws of the State of Mississippi to register to vote.

The person or persons against whom the registrar decides may appeal as above provided just as if a hearing had been held.

§ *12.* Strict rules of evidence shall not be enforced at the hearing herein provided for. Witnesses may be examined by the applicant or his attorneys, and by the challenger or challengers or their attorneys.

§ *13.* The provisions of this act are intended to provide an additional administrative method whereby third parties may challenge the sufficiency of any application to register and the good moral character of an applicant, and are not intended to affect the right, duty and authority of the registrar to determine such qualifications, as now provided by law, if no challenge is made by any third party.

* * * * *

APPENDIX B

United States District Court, Southern District of Mississippi, Jackson Division

Civil Action Number 3312

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF MISSISSIPPI, ET AL., DEFENDANTS

Before CAMERON and BROWN, *Circuit Judges,* and COX, *District Judge.*

CAMERON, *Circuit Judge:* In this action, the "Indestructible Union" *member* of the *partnership* which constitutes the government of this country makes a frontal attack upon the other member, the "Indestructible State" of Mississippi, seeking to enjoin the enforcement of certain laws of the State defining the qualifications of the "electors" who shall vote in elections for president and vice president of the United States and members of the Congress. The State of Mississippi and its people have, in the Constitution of 1890 and thereafter, *enacted constitutional and statutory provisions covering the whole field* of choosing of such "electors". The United States seeks to strike down some of these enactments upon the claim that they violate the Fourteenth and Fifteenth Amendments of the Constitution, in that they deny certain rights to Negroes because of their race, color or previous condition of servitude. We hold that,

from the face of the pleadings, the effort to strike them down may not succeed.[1]

[1] This Court has met on two occasions with counsel for the various parties. On the first meeting we had an extensive pre-trial and exploratory hearing during which the large number of lawyers and the Court discussed generally the questions presented and the procedural means by which they could best be approached. There was general discussion about the issues involved. the use of discovery procedures and other matters and tentative orders were entered which, by the action taken here, are rendered inoperable.

After a change in the personnel of the Court, another hearing with counsel was held and full argument was invited in which each litigant urged the procedures he thought desirable. The defendants had filed, prior to their answers, a number of motions attacking the constitutionality of some of the statutes relied upon by the plaintiffs when given the constructions placed on them by the plaintiff; and each defendant had filed a motion to dismiss the claim against it or him, on the ground that the complaint failed to state a claim, that the Court did not have jurisdiction of the subject matter or of some of the parties and had moved that they be heard in advance of any trial on the merits.

Following that argument and after correspondence between the Judges, two additional conferences were had. The plaintiff had answered in large volume the interrogatories propounded to them by certain of the defendants and had taken a number of depositions, but had not completed its discovery procedures. The defendants were claiming the right, if their motions to dismiss were denied, to begin their discoveries and to take the depositions of each of the registrars in the State of Mississippi or of prior registrars. It further appeared that no matters outside the pleadings had been presented to the Court, that no motion for summary judgment under Rule 12(c) had been made or the propriety of it suggested and that no affidavit or counter affidavits had been filed which complied with the requirements of Rule 12(c) and 52 F.R.C.P. It was further found that the interrogatories had been answered and sworn to by various attorneys for the plaintiff and set forth the results of their investigations and were made up of legal

I.

The United States of America filed a complaint invoking the jurisdiction of this Court under the provisions of 42 U.S.C. § 1971(d),[2] 28 U.S.C. § 1345,[3] and

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or factual conclusions from hearsay evidence or were otherwise inadmissible in evidence.

We concluded that the case could be heard and decided much more expeditiously by considering the complaint and all well-pleaded averments, stripped of legal opinions and conclusions, as factually true and could reach a decision in keeping with accepted legal principles and could do justice to the parties as completely as if the contents of the answers to interrogatories and the depositions should be considered.

The defendants have pressed their motions to dismiss, claiming the right to be heard before trial on the merits on such grounds as failure of the complaint to state a claim, nonjurisdiction of the subject matter or the parties, and like questions. We concluded that this position was sound and in the interest of justice and have therefore disposed of the case on the face of the pleadings, having rejected all of the depositions and interrogatories and the answers thereto (although none of them were ever offered in evidence or presented to the Court).

We think this is not in conflict with such cases as *Conley* v. *Gibson*, 355 U.S. 41. Compare *KVOX* v. *Associated Press*, 299 U.S. 269, 278; *Battaglia* v. *General Motors Corp.*, 169 F. 2d 254, certiorari denied 355 U.S. 887; *Flanders* v. *Coleman*, 250 U.S. 223; *Rhode Island* v. *Massachusetts*, 37 U.S. 657, 659.

[2] "1971. Voting rights—Race, color, or previous condition not to affect right to vote.

"(d) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law. 71 Stat. 637, Sept. 9, 1957."

[3] "§ 1345. United States as plaintiff

"Except as otherwise provided by the Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States

28 U.S.C. § 2281.[4] The State of Mississippi was joined as a party defendant pursuant to § 601(b) of the Civil Rights Act of 1960.[5] The other defendants are the three members of the Miss. State Board of Election Commissioners, and six county registrars of voters (the regularly elected Circuit Clerks of their respective counties).

The complaint is filed under the authority of 42 U.S.C. § 1971 (a)–(c).[6] It attacks the validity of the Mississippi Constitution and statutes which govern registration for voting. It contains four claims. In

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or by any agency or officer thereof expressly authorized to sue by Act of Congress. June 25, 1948, c. 646, 62 Stat. 933."

[4] "§ 2281. Injunction against enforcement of State statute; three-judge court required.

"An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title. June 25, 1948, c. 646, 62 Stat. 968."

[5] "Whenever, in a proceeding instituted under this subsection any official of a State or subdivision thereof is alleged to have committed any act or practice constituting a deprivation of any right or privilege secured by subsection (a) of this section, the act or practice shall also be deemed that of the state and the State may be joined as a party defendant and, if, prior to the institution of such proceeding, such official has resigned or has been relieved of his office and no successor has assumed such office, the proceeding may be instituted against the State." (Now a part of 42 U.S.C. § 1971(c).)

[6] "(a) All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without dis-

the plaintiff's words, these claims are described as follows:

"The first claim of the Complaint attacks the validity of Section 244 of the Mississippi Con-

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tinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

"Intimidation, threats, or coercion

"(b) No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

"Preventive relief; injunction; costs; State as party defendant.

"(c) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. In any proceeding hereunder the United States shall be liable for costs the same as a private person. Whenever, in a proceeding instituted under this subsection any official of a State or subdivision thereof is alleged to have committed any act or practice constituting a deprivation of any right or privilege secured by subsection (a) of this section, the act or practice shall also be deemed that of the State and the State may be joined as a party defendant and, if, prior to the institution of such proceeding, such official has resigned or has been relieved of his office and no successor has assumed such office, the proceeding may be instituted against the State. 74 Stat. 90, May 6, 1960"

stitution, adopted in 1955 and used since that time by registrars throughout Mississippi, which provides as a prerequisite for registrations that persons must read and write and give a reasonable interpretation of any section of the Mississippi Constitution and a statement of the duties and obligations of citizenship to the local county registrar on a form provided by the State Board of Election Commissioners. The Complaint attacks Section 244 and its implementing legislation on the following grounds:

"1. Section 244 vests unlimited discretion in the registrar and in light of its setting of white political supremacy and a racially segregated society it is an unconstitutional device to disfranchise Negroes;

"2. Section 244 imposes new and more stringent requirements for registration following a long period of racial discrimination in the registration process, and exempts from the new requirement most of the white citizens, the inevitable effect of which is to perpetuate past discrimination;

"3. In a State where public educational facilities are and have been racially segregated and those for Negroes are inferior, the interpretation test which bears a direct relation to the quality of public education violates the Fifteenth Amendment;

"4. Section 244 is vague and provides no objective standards for its administration;

"5. There is no reasonable or legitimate interest on the part of the State in requiring as a prerequisite for voting that citizens interpret certain of the legal and hyper-technical provisions of the Mississippi Constitution.

"The second claim of the Complaint attacks Section 241A of the Mississippi Constitution enacted in 1960 which provides that applicants for registration shall be of good moral character. The Complaint alleges that this constitutional provision is invalid because, since regis-

tration is permanent, it exempts most of the white citizens in Mississippi from its requirements. It also provides no objective reference by which the county registrar may determine good moral character and thus is so vague and indefinite as to permit registrars to arbitrarily reject Negro applicants.

"The third claim attacks the validity of a Mississippi statute enacted in 1960 which permits registrars to destroy registration records. In 1960 Congress enacted Title III of the Civil Rights Act requiring county registrars to retain and preserve the very records which under Mississippi law are permitted to be destroyed.

"The fourth claim in the Complaint attacks a package of legislation adopted by the Mississippi legislature shortly after the Court of Appeals for the Fifth Circuit issued an injunction on April 10, 1962 forbidding the registrar in Forrest County, Mississippi, from engaging in discriminatory practices in registration for voting. This legislative package included House Bills 900, 903, 822, 904. H.B. 900 requires that applicants for registration complete a letter-perfect application form without assistance in order to qualify to register. H.B. 903 prevents registrars from advising applicants for registration as to the reason such applicant was rejected, because such would constitute assistance to the applicant. H.B. 822 and 904 provide for publication of the names of applicants for registration, require an applicant to wait an extended period even before he determines whether he is registered or denied registration, and permit any qualified elector to challenge the qualifications of any applicant whose name is published. This package of legislation is attacked as arbitrary and unreasonable. It exempts from its provisions most of the white citizens because they are presently registered to vote and its unquestioned effect is to impose more burdensome and

stringent requirements for registration on persons not registered prior to 1962. The legislation as with the other laws under attack provides no objective standards for its administration.

"The relief requested by the United States is a declaration of the invalidity of Sections 244 and 241A of the Mississippi Constitution and the implementing legislation of both provisions, the records destruction legislation, and four bills in the package of legislation enacted in 1962. An injunction vitiating the effects of the invalid Mississippi laws and practices thereunder is requested. [Actually the complaint prays for a mandatory injunction setting up court created state voter registration qualifications for Negroes only and requiring the defendants to use such qualifications in registering Negroes who may apply after the date of such an order.] Plaintiff also requests the court to find that the use of the invalid legislation has deprived Negro citizens of the right to vote on account of their race and that the deprivations have been pursuant to a pattern and practice of racial discrimination. This finding is sought to set in motion 42 U.S.C. 1971(e) of the Civil Rights Act of 1960."

II.

Each defendant has moved to dismiss the complaint for failure to state a claim on which relief could be granted and the defendant Registrars of voters who are non-residents of this district have moved to dismiss for want of venue jurisdiction; the defendant Registrar of Claiborne County has moved for dismissal or for transfer to the division having venue jurisdiction of her county. Each defendant Registrar has also moved for a severance and separate trial. No supporting or counter affidavits were or have been filed. Answers have been filed by all defendants.

III.

It is elementary that in ruling on the motions to dismiss, the Court must treat them substantially as demurrers testing the legal sufficiency of the complaint. The Court must assume all of the complaint's well-pleaded facts, as distinguished from conclusions, deductions and averments of law, as established for the purpose of the motion.[7] Neither the answers of the defendants nor any part of the discovery procedures should be considered.[8]

IV.

The Complaint further alleges the following as facts: All registrars of voters in the State of Mississippi since at least 1892 have been white citizens. In the counties of the defendant registrars, the statistics on voting age population of Negro and white persons and the approximate voter registration of each race are as follows:

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[7] *Collins* v. *Hardyman*, 341 U.S. 651; *Halliburton Co.* v. *Norton Drilling Co.*, 302 F. 2d 431. Modern practice treats such motions as performing every office of the former demurrer, but as unhampered by any of its technical rules. The Complaint must be viewed in a light most favorable to the plaintiff.

[8] "Plaintiffs did not submit the case to be decided upon the merits upon the bill, answers and affidavits. Defendants' motion to dismiss, like the demurrer for which it is a substitute (Equity Rule 29) [28 U.S.C.A. following section 723] was addressed to the sufficiency of the allegations of the bill. For the purpose of that motion, the facts set forth in the bill stood admitted. For the purpose of that motion, the court was confined to the bill and was not at liberty to consider the affidavits or the other evidence produced upon the application for an interlocutory injunction." *Polk Co.* v. *Glover*, 305 U.S. 5; as to the rejection of conclusionary allegations of fact and law, see *Newport News Shipbuilding & Drydock Co.* v. *Schauffler*, 303 U.S. 54, and *Snowden* v. *Hughes*, 321 U.S. 1; *Gibbs* v. *Buck*, 307 U.S. 66.

	White		Negro	
	Voting age population	Registration	Voting age population	Registration
Amite	4,449	3,295	2,560	1
Coahoma	8,708	8,376	14,604	1,371
Claiborne	1,688	1,440	3,969	138
Lowndes	16,460	5,869	8,362	63
LeFlore	10,274	9,803	13,567	258
Pike	12,163	9,989	6,936	124

At the time of the adoption of the Mississippi Constitution of 1890 there were substantially more Negroes than whites in Mississippi. By 1899, approximately 122,000, or 82% of the white males of voting age and 18,000 or 9% of the Negro males of voting age were registered to vote in Mississippi. Since 1899, a substantial majority of white persons reaching voting age in Mississippi have become registered voters. The percentage of Negroes registered to vote has declined.

During the period from 1899 to approximately 1952 Negroes were not allowed to register to vote; literate Negroes were required to interpret sections of the Mississippi Constitution; and Negroes were excluded from Democratic primary elections. During this time, victory in the Democratic primary in Mississippi was tantamount to election. By 1951, a much higher percentage of the Negroes of voting age in Mississippi were literate than in 1890.

In 1952, a proposed amendment to Section 244 of the Constitution, providing that in the future, it would be prerequisite to becoming an elector that a person be able to read and write any section of the Mississippi Constitution and demonstrate a reasonable understanding of such section and the duties and obligations of citizenship, was defeated by the voters.

In 1954, at least 450,000 or 63 per cent of the white persons of voting age in Mississippi were registered to vote. In 1954, approximately 22,000 or five per cent of the Negroes of voting age in Mississippi were registered to vote.

In 1954, after the Supreme Court had declared state operation of racially segregated schools unconstitutional, white citizens councils—not parties to this action—were formed in Mississippi. The purpose of these organizations was the maintenance of racial segregation and white supremacy in Mississippi. The first statewide project undertaken by these organizations was the attempt to induce the white voters of Mississippi to adopt the proposed amendment to Section 244 of the Mississippi Constitution of 1890.

Of the approximately 472,000 registered voters in Mississippi who were eligible to vote on this proposed amendment in 1954, about ninety-five per cent were white; fewer than five per cent were Negro. The amendment was adopted in a state where the public education facilities were and are racially segregated, and where such facilities provided for Negroes were and are inferior to those provided for white persons.

Since 1955, the defendant registrars, as well as many other registrars in Mississippi have enforced the requirements of Section 244, as amended, when Negroes have attempted to register to vote, by requiring Negroes to interpret sections of the Mississippi Constitution and to demonstrate their understanding of the duties and obligations of citizenship on the form prescribed by the State Board of Election Commissioners.

In 1960, approximately 500,000 or 67 per cent of the white persons of voting age in Mississippi, and approximately 20,000 to 25,000, or five per cent of

the Negroes of voting age were registered to vote. Of the approximately 525,000 registered voters in Mississippi who were eligible to vote on the proposed amendment adding Section 241–A to the Mississippi Constitution, about 95 per cent were white; fewer than 5 per cent were Negro. The amendment was adopted in a state where all state officials were white.

The suits filed by the United States against several county voter registrars and the action taken by the Court of Appeals in issuing an injunction against T. C. Lynd, the Circuit Clerk and Registrar of Forrest County, Mississippi, concerning voter registration discrimination, were matters of common knowledge throughout the State of Mississippi.

Some registration application forms, including some forms received by defendant H. K. Whittington in Amite County, Mississippi, have been destroyed.

In late 1961 and early 1962, Negro citizens and organizations conducted a voter registration drive in Mississippi for the purpose of increasing the number of Negroes eligible to vote in the 1962 Mississippi primary elections. For the first time in many years Negroes were candidates for the office of representative in the Congress of the United States. These facts were widely publicized and were matters of common knowledge throughout Mississippi.

V.

In support of its motion to dismiss, the State of Mississippi contends that Section 601(b) of the Civil Rights Act[9] is unconstitutional as applied to it. Its position is that the Fifteenth Amendment forms the only basis for 42 U.S.C. § 1971,[10] and that this amendment is directed to persons through whom a state

[9] See Note 5.

[10] See *United States* v. *Raines*, 362 U.S. 17.

may act and not to the sovereign entity of the state itself. The State of Mississippi also contends that all legislation by which Congress may choose to implement the Fourteenth Amendment is subject to the same objection. It supports these contentions by citation of numerous authorities.[11] These contentions appear to us to present a substantial constitutional claim. Cf. *Gibbs* v. *Buck*, Note 9, supra.

In *Ex parte Virginia*,[12] the Supreme Court of the United States used the following language:

> "They [the proscriptions of the 14th Amendment] have reference to actions of the political body denominated a State, by whatever instruments or in whatever modes that action may be taken. A State acts by its legislative, its executive or its judicial authorities. It can act in no other way. * * * Whoever, by virtue of public position under a State government, deprives another of property, life, or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. * * *
>
> "But the constitutional amendment was ordained for a purpose. It was to secure equal rights to all persons, and, to insure to all persons the enjoyment of such rights, power was given to Congress to enforce its provisions by

[11] E.g., the United States Supreme Court cases of: *McCulloch* v. *Maryland*, 4 Wheat 316; *Osborne* v. *Bank of the United States*, 9 Wheat 738; *Texas* v. *White*, 7 Wall. 700; *Ex parte Virginia*, 100 U.S. 339; *Poindexter* v. *Greenhow*, 114 U.S. 270; and *Ex Parte Young*, 209 U.S. 123; and a number of opinions from the United States Court of Appeals for the Fifth Circuit, the most recent of which is *St. Helena Parish School Board* v. *Hall*, 287 F. 2d 376.

[12] Note 11, supra.

> appropriate legislation. *Such legislation must act upon persons, not upon the abstract thing denominated a State, but upon the persons who are the agents of the State in the denial of the rights which were intended to be secured.*" [Emphasis added.]

This reasoning from *Ex parte Virginia* has been recently approved in *Cooper* v. *Aaron;*[13] and in *United States* v. *Raines,*[14] as to the Fifteenth Amendment.

In the case of *Poindexter* v. *Greenhow,*[15] the Supreme Court said:

> "In the discussion of such questions the distinction between the government of a state and the state itself is important and should be observed. In common speech and common apprehension they are usually regarded as identical; and as ordinarily the acts of the government are the acts of the State, because within the limits of its delegation of power, the government of the State is generally confounded with the State itself, and often the former is meant when the latter is mentioned. *The State itself is an ideal person, intangible, invisible, and immutable. The government is an agent, and, within the sphere of the agency, a perfect representative; but outside of that it is a lawless usurpation.* The Constitution of the State is the limit of the authority of its government, and both government and State are subject to the supremacy of the Constitution of the United States and of the laws made in pursuance thereof. So that, while it is true in respect to the government of a State, as was said in *Langford* v. *United States,* 101 U.S. 341 (Bk. 25, L. ed 1010), that the Maxim, that "the King can do no wrong" has no place in our system

[13] 358 U.S. 1.

[14] Note 10, supra.

[15] Note 11, supra.

of government; yet it is also true, in respect to the State itself, that whatever wrong is attempted in its name is imputable to its government and not to the State, for as it can speak and act only by law, whatever it does say and do must be lawful. *That which, therefore, is unlawful because made so by the supreme law, the Constitution of the United States, is not the word or deed of the State, but is the mere wrong and trespass of those individual persons who falsely speak and act in its name.* It was upon the ground of this important distinction that this court proceeded in the case of Texas v. White, 7 Wall., 700 (74 U.S., bk. 19, L.ed 227), when it adjudged that the acts of secession which constituted the civil war of 1861 were the unlawful acts of usurping State Governments and not the acts of the States themselves, inasmuch as 'the Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States'; and that consequently the war itself was not a war between the States, nor a war of the United States against States, but a war of the United States against unlawful and usurping governments, representing not the States, but a rebellion against the United States.''

In *Ex Parte Young*,[16] the court was explicit in holding that the proper defendant in an action seeking to prevent the enforcement of an unconstitutional statute was not the sovereign state itself, but rather the officer charged with the enforcement of the statute.[17]

Although the cases relied on principally relate to instances in which the Eleventh Amendment was invoked as a bar to the action brought, the State of

[16] Note 11, supra.

[17] See also *Peay v. Cox*, 190 F. 2d 123, 125, certiorari denied, 342 U.S. 896, a voting case which came up from Mississippi.

Mississippi contends that it does not rely on the Eleventh Amendment here. It rather asserts that the legal reasoning which allows individuals to pursue alleged violations of Fourteenth and Fifteenth Amendment rights caused by "State Action," despite the provision of the Eleventh Amendment, is equally applicable to demonstrate the non-liability of the State in the present suit.

In the latest and only comment on the subject, the Supreme Court of the United States expressly pretermitted any decision on the constitutionality of Section 601(b) in its per curiam opinion in *United States* v. *Alabama*.[18] The Court of Appeals for the Fifth Circuit has taken the same attitude in a direct comment on the same question in *United States* v. *Atkins*,[19] in which the Court stated:

> "In that case [United States v. Alabama], the Supreme Court intimated no views upon 'any defenses, constitutional or otherwise, that may be asserted by the State.' We follow the same course in the present case."

Obviously these tribunals consider the question still an open and undecided one.

The plaintiff contends that Section 601(b) authorizes its suit against the State and cites in support thereof the *Atkins* case and the prior Fifth Circuit decisions of *United States* v. *Lynn*,[20] and *United States* v. *Dogan*.[21]

Since it is clear from *United States* v. *Alabama*, Note 18, supra, and *United States* v. *Atkins*, Note 19, supra, that neither the Supreme Court nor the Court of the Fifth Circuit considers that the constitution-

[18] 362 U.S. 602.

[19] 323 F. 2d 733.

[20] 301 F. 2d 818; and cf. 304 U.S. 583.

[21] 314 F. 2d 767.

ality of § 601(b) has been passed upon and that both courts consider the question open, it is desirable to pause here to demonstrate that neither *Lynd* nor *Dogan* passed upon the constitutionality of the statute in any legal way.

The hasty and confused handling of the two *Lynd* cases by the Court of Appeals for the Fifth Circuit leaves the "whole voyage of their life bound in shallows and in miseries." Perhaps an effort at unscrambling them may be measurably fruitful.

The first case commenced against Lynd—but the second case decided—was brought under Title III, Civil Rights Act, 1960, 42 U.S.C. § 1974d, and involved an effort by Kennedy to examine and copy his records.[22]

This case, No. 1604, in some way found its way to the Court of Appeals and was decided by a panel composed of Judges Rives, Brown and Wisdom, the opinion by Judge Brown. See *Kennedy* v. *Lynd*, 306 F. 2d 222. The opinion covered several other cases from the State of Louisiana and is specifically dealt with beginning at page 227 under the heading "No. 19636, Lynd, Registrar Forrest County, Mississippi." It was there that the dictum was first expressed that "Relief under § 1971(c) is not confined to named individual voter officials but extends as far as the sovereign State itself." The opinion purports to lay down a broad sweep of general rules governing the right of the United States to examine and copy records.

[22] Civil Action No. 1604, Hattiesburg Division Southern District of Mississippi, commenced January 19, 1961, decided by the District Court January 15, 1962, which court entered an order adjudicating that "Case No. 1604 [is] abandoned and effectually non-existent," and the case was passed to the files. The reason assigned was that the United States had brought a second suit involving the same subject matter.

It is plain that the above quoted statement from page 228 of the Report is wholly without basis. Neither the United States nor the State of Mississippi was a party to that civil action. The appeal was from the action of the court below in passing the case to the files—certainly a non-appealable action which could be set aside by either party at any time upon a showing that the reason for putting the case on the inactive list was no longer in existence. The decision is bottomed by the author on *United States* v. *Woods*, 5 Cir., 1961, 295 F. 2d 772, 777. An examination of that report will reveal that it did not involve any of the questions presented by *Kennedy* v. *Lynd*, and the statement that the sovereign State was within the ambit of the relief accorded by the statutes is without legal basis.

The second case commenced against Lynd—but the first decided—was brought pursuant to 42 U.S.C. § 1971(c) and involved a discrimination suit by the United States against Lynd and the State of Mississippi.[23] In that case, no mention was made anywhere in the pleadings, the brief of either counsel, or the opinion of the Court of Appeals of the question of the constitutionality of § 601(b) of the Civil Rights Act of 1960.

This case had never been decided by the District Court. The State of Mississippi was joined as a party defendant, as permitted by the explicit terms of the Act. The only time we find the State mentioned in the opinion by the Court of Appeals is at page 823, where it rejected the contention that the Court of Appeals should not grant a temporary injunction "because the State has not filed its answer and has not put on its proof."

The trial court had ordered the United States to

[23] Number 19576, *United States* v. *Lynd, et al*, begun July 6, 1961 and decided by the Court of Appeals April 10, 1962, 301 F. 2d 818.

furnish the names of all persons whom it intended to use as witnesses to show discrimination. The Government responded by filing an amended complaint, to which it attached an appendix giving the names of its witnesses. A number of witnesses were called whose names did not appear on the list, and the defendants objected to the testimony as being outside the scope of the pleadings. The District Court permitted the United States to amend orally the amended complaint, with the condition, however, that defendants could defer cross-examination of the surprise witnesses for a period of thirty days and could then answer the amended complaint.

The United States rested its case, and the defendants put on their testimony. At the conclusion of the three-day hearing, the District Court ruled, upon application of the defendants, that all questions before it, including motion for preliminary injunction, would be deferred until after the thirty-day period, so that the defendants could prepare to cross-examine the witnesses whose names had been omitted from the list.

The District Court did not enter any order at all, and did not make any findings of fact or conclusions of law, and no notice of appeal was given, as provided by the Federal Rules of Civil Procedure. The United States adopted the expedient of going direct to the Court of Appeals for the Fifth Circuit, there filing a motion for an injunction pending appeal. The case was heard at an emergency hearing in Houston, Texas.

Neither in the District Court nor in the Court of Appeals was the question of the suability of the State of Mississippi mentioned in the briefs and, as stated, the opinion of the Court of Appeals did not mention the existence of such a question. The sole specification of error relied upon by the United States alleged

that the District Court erred in not granting the temporary injunction prayed for.[24]

It is clear, therefore, that the question of the constitutionality or meaning of § 601(b) never became an issue in either *Lynd* case and was never passed upon by the court in either case. Whatever language the Court of Appeals used in either *Lynd* case, therefore, was pure dictum and established no precedent to guide the action of any court.

Nevertheless, the language misled the author of the opinion in the *Dogan* case,[25] and led to the quoting in *Dogan* of the statement which had been incorrectly made in *Kennedy* v. *Lynd* quoted supra.

The District Court for the Northern District of Mississippi[26] had denied the motion of the United States for a preliminary injunction against Dogan, Sheriff and Tax Collector, in connection with his alleged refusal to permit Negroes to pay their poll taxes. The State of Mississippi was named as party defendant, but the lower court had denied any relief against either Dogan or the State. We find no mention in the opinion of Honorable Claude F. Clayton, District Judge,[27] of the question whether any relief should be granted against the State of Mississippi. In the original record, however, among the various discussions of evidence between the court and counsel on one or more occasions, that question was adverted to. It is

[24] "The District Court erred in refusing to grant the Attorney General's application for an order, pursuant to § 305 of Title III of the Civil Rights Act of 1960 (42 U.S.C. § 1974(d), 74 Stat. 88), requiring the registrar of elections of Forrest County, Mississippi to permit the Attorney General to inspect the voting records of that county."

[25] 314 F. 2d at 771.

[26] 206 F. Supp. 446.

[27] 206 F. Supp. 446.

natural that the discussion did not relate to the suability of the state, because nobody made any attack upon the statutory grant of jurisdiction to sue the states. Some objections to testimony were made and the Government contended that the evidence was admissible to show the state's connection with Dogan's actions. Ruling was reserved on the objections, and the Court was never called upon to make its ruling, and did not ever rule on the question.

When the case reached the Court of Appeals, the two specifications of error filed by the United States were these:

> "(1) The District Court erred in refusing to find that distinctions on account of race or color have been made in the collection of poll taxes in Tallahatchie County;
>
> "(2) The District Court erred in excluding evidence of racially discriminatory acts occurring prior to the incumbency of Sheriff Everett R. Dogan on December 24, 1959."

No issue was raised before the Court of Appeals, therefore, as to whether relief "extends as far as the sovereign state itself." It is clear, therefore, that the language used by the Court of Appeals in the *Dogan* case (page 771) is dictum and is not authority in any case involving a question similar to the one before us. In fact, Judge Rives, who is the author of *Atkins*, supra,[28] sat as a member of the Court in the second *Lynd* case and in the *Dogan* case.[29] And see also the

[28] 323 F. 2d 733.

[29] The recent three-judge district court, in the case of *United States* v. *Louisiana* (C.A. 2548E, District Louisiana, Baton Rouge Division, Dec. 27, 1963) was apparently led into the same error in its holding that the State may be joined as a party defendant in a proceeding under 42 U.S.C.A. § 1971. It refers to *Lynd* and *Dogan* as authority.

majority and dissenting opinion of that court in No. 20596, *United States* v. *Ramsey*, — F. 2d —.

The State of Mississippi further makes the point that any violation of 42 U.S.C. § 1971, which would give rise to a cause of action, would constitute a crime under the provisions of 18 U.S.C. § 242. This would then amount to an interpretation of the statute which would authorize a suit between the sovereign federal government and the sovereign state in a criminal matter. As between sovereigns there is no law of crime. It additionally makes the point that the State cannot create an agency to commit a crime, and therefore no statute by fiat can create such a criminal agency relationship.

The State also contends that the special statutes under which this three-judge Court is convoked (28 U.S.C. § 2281–4) specifically authorize an injunction only "restraining the action of any *officer* of such State in the enforcement or execution" of the statutes charged to be unconstitutional.

In *Federal Trade Commission* v. *Claire Furnace Co.*,[30] the Supreme Court ruled that no injunction should issue against a party whose only connection with the proceedings was that it could have requested others to take enforcement action, since all defenses available to the party aggrieved could have been presented in the proceeding wherein enforcement was attempted. In the three-judge district court case of *Massachusetts Farmers Defense Committee* v. *United States*,[31] the court relied upon the *Claire Furnace Company* case and other authorities to support the statement:

> "It is well settled that where a statute or regulation is challenged as being unlawful or

[30] 274 U.S. 160.

[31] 26 F. Supp. 941.

> unconstitutional, an injunction will lie only against the person or agency who is charged with the enforcement of the statute or regulation."

In *Kresge Co.* v. *Ottinger*, 29 F. 2d 762, a special three-judge court, speaking through an opinion by Circuit Judge A. N. Hand, took similar action, as evidenced by the following excerpt from their opinion:

> "Inasmuch as the district attorney of New York county and the board of optometry are nowhere in the statute charged with the enforcement of the act, each bill is dismissed as to them for this reason, as well as for other reasons hereafter stated."

The Federal Court System has always adhered to the rule that constitutional issues are not to be decided except where such constitutional decision is clearly required by the interests of justice. Perhaps the landmark case in support of this proposition is *Ashwander* v. *Tennessee Valley Authority*, 297 U.S. 288. Speaking through Chief Justice Hughes, the Court stated [p. 324]:

> "The pronouncements, policies, and program of the Tennessee Valley Authority and its directors, their motives and desires, did not give rise to a justiciable controversy save as they had fruition in action of a definite and concrete character constituting an actual or threatened interference with the rights of the persons complaining. The judicial power does not extend to the determination of abstract questions * * * At the last term the court held, in dismissing the bill of the United States against the State of West Virginia, that general allegations that the state challenged the claim of the United States that the rivers in question were navigable, and asserted a right superior to that of

> the United States to license their use for power production, raised an issue 'too vague and ill-defined to admit of judicial determination.' * * * Claims based merely upon 'assumed potential invasions' of rights are not enough to warrant judicial intervention." [Citations in the original opinion are omitted for brevity.]

The concurring opinion of Mr. Justice Brandeis gives us an outline of the great judicial principles applicable to constitutional adjudications [Pp. 345–348]:

> "The Court has frequently called attention to the 'great gravity and delicacy' of its function in passing upon the validity of an act of Congress; and has restricted exercise of this function by rigid insistence that the jurisdiction of federal courts is limited to actual cases and controversies; and that they have no power to give advisory opinions. On this ground it has in recent years ordered the dismissal of several suits challenging the constitutionality of important acts of Congress * * *
>
> "The Court developed, for its own governance in the cases confessedly within its jurisdiction, a series of rules under which it has avoided passing upon a large part of all the constitutional questions pressed upon it for decision. They are:
>
> "1. The Court will not pass upon the constitutionality of legislation in a friendly, non-adversary, proceeding, declining because to decide such questions is legitimate only in the last resort, and as a necessity in the determination of real, earnest, and vital controversy between individuals. It never was the thought that, by means of a friendly suit, a party beaten in the legislature could transfer to the courts an inquiry as to the constitutionality of the legislative act.' * * *
>
> "2. The Court will not 'anticipate a question of constitutional law in advance of the necessity

of deciding it.' * * * 'It is not the habit of the court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case.' * * *

"3. The Court will not 'formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.' * * *

"4. The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of. This rule has found most varied application. Thus, if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter. * * *

"5. The Court will not pass upon the validity of a statute upon complaint of one who fails to show that he is injured by its operation * * * Among the many applications of this rule, none is more striking than the denial of the right of challenge to one who lacks a personal or property right. Thus, the challenge by a public official interested only in the performance of his official duty will not be entertained. * * *

"6. The Court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits. * * *

"7. 'When the validity of an act of Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.' "[32]

[32] (Again, citations have been omitted for the sake of brevity.) See also *Lane* v. *Wilson*, 307 U.S. 68.

We are of the view that the motion to dismiss filed by the State of Mississippi presents a case where the Court can and should avoid a decision on a question of constitutionality where, as here, the matter may be decided on nonconstitutional grounds. As the Fifth Circuit pointed out in *United States* v. *Atkins,* supra, it would not be appropriate for it to grant relief against the State where Registrars are in office and are subject to suit and injunctive relief. Nowhere does the Complaint, except by injecting rash conclusions, demonstrate that the State, as such, is enforcing or threatening to enforce the statutes or constitutional provisions under attack. Rather, it is the County Registrars who are defendants who enforce the regulations in question.[35]

Before leaving the question of the suability of the State, it is well to consider the circumstances under which the statute granting the right to sue the State came into being. The United States of America sued the State of Alabama, together with certain registrars who had resigned from the position before the suit was filed. The United States District Court for the Middle District of Alabama dismissed the action holding, among other things, that the sovereign State of Alabama was not subject to suit by the United States in the action involving alleged discrimination in the denial to Negroes of voting rights. *United States of America* v. *State of Alabama, et al.,* March 6, 1959, 171 F. Supp. 720, 730. It relied on the fact that the Civil Rights Act of 1957 did not specifically grant the right to proceed against the State. The court there followed the general law as stated in *United States* v. *United Mine Workers of America,* 1947, 330 U.S. 258, in which it was held

[35] See Note 36 infra.

that sovereign governments were not included within the word "Persons."

The Court of Appeals for the Fifth Circuit affirmed the decision of the district court, *United States of America* v. *State of Alabama,* June 16, 1959, 267 F. 2d 808, stating:

> "Without elaborating upon it, as under the settled law of the cases we could do in extenso, it is sufficient for us to simply say that, under the principle which has been, and still is, controlling upon the federal courts, whatever congress might or could do in providing in a civil rights action for conferring federal court jurisdiction over a state, it has never heretofore done so and it has not in terms done so in the statute invoked here.
>
> "Absent such specific conferring of jurisdiction, a federal court would not, indeed could not assume jurisdiction over a sovereign state without a precedent determination that, though the jurisdiction had not been expressly conferred, the language of the invoked statute carried the necessary, the unavoidable implication that the congress upon the gravest considerations and after the utmost thought and deliberation had intended to and did confer it." (Citing a large number of cases.)

While this action was pending in the Supreme Court upon certiorari, the Congress inserted the words making the state itself conditionally liable under the Civil Rights Act (Act of May 6, 1960, 74 Stat. 86, § 601(b), 42 U.S.C. § 1971(c). The Supreme Court, on May 16, 1960, vacated the judgments of the Court of Appeals and the District Court and remanded to the District Court for further hearing, *United States* v. *Alabama,* 362 U.S. 602, 604, using this language:

> "Shortly before the case was heard in this Court on May 2, 1960 [being the same day the case was argued before the Supreme Court],

> Congress passed the Civil Rights Act of 1960. * * * Among other things § 601(b) of that Act amends 42 U.S.C. § 1971(c) by expressly authorizing actions such as this to be brought against a State. Under familiar principles, the case must be decided on the basis of law now controlling, and the provisions of § 601(b) are applicable to this litigation. * * *
>
> "We hold that by virtue of the provisions of that section the District Court has jurisdiction to entertain this action against the State. In so holding we do not reach, or intimate any view upon, any of the issues decided below, the merits of the controversy, or any defenses, constitutional or otherwise, that may be asserted by the State.
>
> "Accordingly, the judgments of the Court of Appeals and the District Court will be vacated, and the case remanded to the District Court for the Middle District of Alabama with instructions to reinstate the action as to the State of Alabama, and for further proceedings consistent with this opinion."

From these facts it is clear that the statute was passed for a particular purpose, i.e., to fill a vacuum caused by the fact that there were no registrars having jurisdiction over Macon County, Alabama. Under settled principles of constitutional law, this departure from traditional constitutional principles would be held to apply only to the circumstances and conditions which lay behind the Court's holding. We do not have such a situation here. The registrars are all available and full relief can be had against them, and the dismissal of the State from the controversy will in no wise prejudice the granting of the relief sought.

For the reasons stated we think that the proper course here is to grant the motion of the State to dismiss on the ground that the complaint fails to state a claim against it upon which relief could be granted.

VI.

The State Board of Election Commissioners is, by statute composed of the Governor, the Secretary of State, and the Attorney General of the State of Mississippi. § 3202, Mississippi Code of 1942, Annotated. The duties of these Commissioners are comprehensively prescribed and particularized by statute. § 3209.6 Mississippi Code of 1942, Annotated. We have examined the Complaint in detail without finding any fact allegation that these Commissioner Defendants did in any way enforce any of the statutes under attack, nor is any fact allegation made that their actions enforced a denial of registration to any otherwise qualified applicant because of the race or color of the applicant or for any other reason.

No choice is given to the State Election Commission in the selection of County Registrars, that duty arising only in the extreme situation where they have reached the determination that the duly elected Circuit Clerk is an "improper" person. They have no control over the tenure or actions of the Circuit Clerk as Registrar once they have appointed him as required. They are rigidly regulated as to the type of registration forms they must prepare. The statutes make it plain that they are mere conduits through whom a minor part of the registration process is required by statute to flow. The State Election Commissioners are not charged in the Complaint with promulgating any form or with appointing any Registrar otherwise than in accordance with their duties under the statutes relied upon by plaintiff. These statutes are not under attack in this case. Considering the Complaint and any set of circumstances which could be proved under its allegations, we cannot visualize how an injunction could issue against the State Board of Election Com-

missioners or any of its members individually, for they are not charged with enforcing or threatening to enforce any of the statutes under attack.[34] The presence of the State Election Commissioners as parties-defendant in this litigation nevertheless presents the rights of three additional defendants which must be recognized by way of pleadings, discovery procedures, objections to evidence, cross-examination of witnesses, presentation of evidence, and the many other trial procedures which, while time-consuming, are the due of every litigant under our system of judicial procedure.

Three-judge courts constitute a unique burden on the Federal Judiciary. To keep this burden to a minimum, the statutes vesting the right to call such courts to sit in judgment of constitutional challenges are to be strictly construed as a procedural technicality and not as a broad remedial social policy. See *Phillips* v. *United States,* 312 U.S. 246; *Stainback* v. *Mo Hock Ke Lok Po,* 336 U.S. 368; and *Kesler* v. *Dept. of Public Safety,* 369 U.S. 153.

Where, as here, parties are brought before such a tribunal who are not at all within the contemplation of the statutes attacked and who are not indispensable, necessary or proper parties to the determination of the issues in controversy, they should be dismissed in the interests of sound judicial administration as well as to spare the litigants themselves the expense and inconvenience of a trial procedure. For these additional reasons, the motion of the State Election Commissioners to dismiss for failure to state any claim

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[34] See *Federal Trade Commission* v. *Claire Furnace Co.,* supra: *Massachusetts Farmers Defense Committee* v. *United States,* supra: and *Kresge* v. *Ottinger,* supra.

upon which relief could be granted should be sustained.[35]

VII.

We are further of the opinion that the statutes of Mississippi make it plain that the County Registrar alone is charged with the enforcement of the statutes under attack here.[36]

Complainant makes no charge of any conspiracy or any concert of action between any two or more of the individual county registrar defendants.[37] By plaintiff's own interpretation, the Complaint charges no series of transactions or occurrences but, rather, individual enforcement by the separate Registrar Defendants of the statutes alleged to be unconstitutional

[35] What is here stated with regard to the State Election Commissioners would apply with equal force to the defendant, State of Mississippi, so long as the actual enforcement officials, the County Registrars, remained in office and subject to suit.

[36] Mississippi Code of 1942, Annotated, § 3212, entitled "Registrar to register voters" states:

"The registrar shall register on the registration books of the election district of the residence of such person anyone appearing before him, and being, upon examination, found, in compliance with Section 244 of the Constitution, as amended, and in compliance with Section 241-A of the Constitution of Mississippi to be entitled to be registered as an elector, upon such person taking and subscribing the oath required by Section 242 of the Constitution of Mississippi; but persons who may be entitled to register under the provisions of Section 251 of the Constitution of Mississippi, who would be otherwise disqualified by reason of age, may take the oath as modified by that circumstance, and the subscription of the oath shall be by the elector writing his name in the proper column in the registration book.

[37] Registration to vote is an individual process of showing qualification or lack of qualification on a case by case basis. It cannot be the subject of class action relief. *Reddix v. Lucky*, 252 F. 2d 930.

and void. We cannot agree with plaintiff's contention that, if several unrelated officials of a State independently applied the terms of a statute in the enforcement of their duties of office, all of such applications would constitute a single transaction or occurrence, or a series of transactions or occurrences within the meaning of Rule 20(a) of the Federal Rules of Civil Procedure.

In the absence of a charge of joint wrong-doing by the individual defendant registrars, we find no authority to continue the suit against them as a joint cause of action. Each act of registration or failure or refusal to register must, of necessity, take place separately and apart from every other act of registration or non-registration, even within the same county. The Complaint contains no allegation that any such act of registration or failure or refusal to register was a part of any transaction or occurrence concerned with similar acts in a separate county. The only nexus is the use of the same registration laws. This is insufficient to support a joint cause of action.

VIII.

If the plaintiff intended by its Complaint to state also a cause of action based upon a pattern and practice of individual racial discrimination by these defendants in the enforcement of the duties of their offices, such causes of action would be justiciable solely before a single district judge.

This Court has venue jurisdiction of the claims asserted against H. K. Whittington, the Registrar of Amite County, and against Wendell R. Holmes, the Registrar of Pike County, both of these defendants being residents of the Jackson Division of the Southern District. We do not agree with plaintiff's effort to consolidate the various counties with the idea

that the acts of the several registrars may be pooled in determining whether there has been a pattern or practice under the terms of the statute. Those very terms recognize that each county in Mississippi is a separate unit for registration and must be so treated in every action against the registrar.

IX.

The asserted right of plaintiff that the United States can maintain this action against any one or all of the defendants is not sustained by the authorities upon which the plaintiff relies.[38]

§ 2281 deals with three-judge courts, and we need spend no time in further discussion of that statute. The controversy is limited, therefore, to whether the Congress could vest in the plaintiff the right claimed by it to maintain this particular action and whether § 1971 does, in fact, justify maintenance by the plaintiff of the action it has brought. It should be borne in mind what is fairly stated in the complaint and the briefs of the plaintiffs and what its attorney categorically stated at the argument—that the sole object of this action is to have he Court declare the attacked sections of Mississippi's Constitution and statutes unconstitutional, and to substitute therefor the alternative suggestions set forth in the complaint; the plaintiff specifically disavowing any desire or purpose to seek any relief based upon discrimination. This is further verified by

[38] The complaint states that the Court has jurisdiction "under 42 U.S.C. § 1971(d), 28 U.S.C. § 1345, and 28 U.S.C. § 2281. Neither party makes any serious argument concerning § 1345, which vests district courts with jurisdiction of all civil actions "commenced by the United States, or by any agency or officer thereof *expressly authorized to sue by act of Congress.*" The controversy revolves around the words in the statute which we have underscored.

the four claims stated supra in plaintiff's own language.

It is elementary that all federal jurisdiction is statutory unless the Constitution itself confers it. And the existence of federal jurisdiction must be shown clearly, and it must be denied if there is doubt about the constitutionality of the grant of jurisdiction. In *Screwes* v. *United States,* 325 U.S. 91, the court was able to save what would otherwise have been an unconstitutional grant by surrounding the jurisdiction by narrow limitations.

The only claim asserted by plaintiffs which has any show of merit is that this action is maintainable under 42 U.S.C. § 1971(d), which has been quoted supra. That subsection must be considered in the light of the one immediately preceding it: "Whenever, in a proceeding instituted under this subdivision any official of the state or subdivision thereof is alleged to have committed any act or practice constituting a deprivation of any right or privilege secured by subsection (a) of this section * * *" The provision of subsection (a) to which reference is made is in these words: "(a) All citizens of the United States *who are otherwise qualified by law to vote in any election by the people in any State,* Territory, district county, city, parish, township, school district, municipality, or other territorial subdivison, shall be entitled and allowed to vote at all such elections, without distinction of race, color," nothwithstanding the Constitution, laws, custom or usages of the state.

These words from subsection (a) plainly state that the United States may intervene in aid of any person of color, *provided that person is "otherwise qualified by law* to vote at any election by the people in any state * * *" (Emphasis added.) The mean-

ing of these provisions seems perfectly clear. The United States may institute proceedings for preventive relief, provided a state officer is threatening or attempting to deny him the right of voting in a federal election; and provided also he had "the qualifications requisite for electors of the most numerous branch of the state legislature." *Then, and only then, could the United States come to the rescue* of one of its citizens whose right to vote was challenged. In that event, the Attorney General was empowered to bring an action for preventive relief.

The complaint here fails to show that those circumstances existed. This action seeks no relief for any citizen who is qualified under the laws of Mississippi to vote for electors of the most numerous branch of Mississippi's legislature. This action seeks solely to have the Court declare unconstitutional most of the qualifications Mississippi defines for electors of the most numerous branch of its Legislature. It constitutes a massive scatter-gun attack against the many important provisions of Mississippi's Constitution and statutes. There is no intimation that § 1971, as a whole or as to any part of it, vests such a right in the United States itself. § 244 was placed into the organic law of Mississippi by its people in convention assembled after the confusions and frustrations of twenty years of the Tragic Era had subsided enough for its citizenship to bring a semblance of order out of chaos. The people themselves, through their elected convention, placed that section in the Constitution.

The other constitutional provisions attacked by the plaintiff entered the Constitution of Mississippi by the direct vote of the people. The symmetrical statutory structure for carrying out the constitutional mandates was worked out and duly passed by the legally constituted legislatures of the state. § 1971

does not invest the United States or its Attorney General with any power to bring any action to destroy any state's constitution or laws.

It is clear that § 1971 contemplated and envisioned the existence of state requirements for voting which did not on their face discriminate because of race or color. The operative language is "all citizens of the United States who are otherwise qualified by law to vote." This presupposes the existence of valid state requirements for voting. There is no provision of the Constitution or a statute of Mississippi which deprives any citizen of the right to vote because of race or color.

It is equally clear that this effort of the United States to invalidate the state voting requirements here involved is outside the scope of the Fifteenth Amendment to the Constitution, which has been repeatedly held to be the sole basis of § 1971(a). *United States* v. *Reese,* 92 U.S. 214, and *Guinn* v. *United States,* 238 U.S. 347.

Guinn involved a constitutional provision of Oklahoma, which set up a registration requirement for voting, but provided that this requirement should not be applied to any person who was, on January 1, 1866, qualified to vote or to the lineal descendant of such person. The Supreme Court found this constitutional provision on its face to be in conflict with the Fifteenth Amendment, since it was well known that no Negroes were qualified to vote in Oklahoma on January 1, 1866. This brief quotation from the decision in *Guinn* (238 U.S. 347, at 362) will suffice to demonstrate the attitude of the court then and now:

> "Beyond doubt the amendment does not take away from the state governments in a general sense the power over suffrage which has belonged to those governments from the begin-

> ning and without the possession of which power the whole fabric upon which the division of state and national authority under the Constitution and the organization of both governments rest would be without support and both the authority of the nation and the State would fall to the ground. In fact, the very command of the Amendment recognizes the possession of the general power by the State, since the Amendment seeks to regulate its exercise as to a particular subject with which it deals * * * Thus the authority over suffrage which the States possess and the limitation which the Amendment imposes are coordinate and one may not destroy the other without bringing about the destruction of both."

Language of identical import is found in *Reese* (92 U.S. 217–218).

The first sentence of subsection (c) of § 1971 is the one which grants the Attorney General the power to institute certain proceedings under certain circumstances: "Whenever any *person* has engaged or there are reasonable grounds to believe that any *person* is about to engage in any act or practice which would deprive any other person of any rights or privileges secured by subsection (a) or (b) of this section." The plain meaning of that part of subsection (c) is that Congress vested the Attorney General with power to seek injunctive relief against state election officials acting under color of law when said officials should deny a person "otherwise qualified to vote" of the right to vote because of race or color.

Assuming, therefore, that § 1971 does empower the United States, through the Attorney General, to assist legally a person who meets all of the other qualifications of Mississippi law, who is being discriminated against because of his color, the statute does not tend to support the action here, which is not based upon

discrimination, but upon the asserted fundamental unconstitutionality of the entire structure of Mississippi law providing voter qualifications. Under these circumstances the least this Court can do is to avoid a doubtful constitutional construction and to dismiss the action because it is not brought under any power given by the statute relied on, but is a direct attack by the Indestructible Nation as such, and is against the Indestructible State as such. And, moreover, it is an attack against a state aimed at destroying its action in a field committed exclusively to it by the Constitution; to-wit, the State's power to determine and define the qualifications of the electors who may vote not only in state elections, but in federal elections as well.

X.

Article I, Section 2 of the Constitution provides that representatives shall be "chosen every second year by the People". It further provides that "the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature". These simple words contain the only requisite provided for the selection of those persons who shall vote in federal elections.[39]

[39]Volume 49, No. 10, 1963, of the American Bar Association Journal contains an excellent article on "Free Elections and the Power of Congress Over Voter Qualifications." Therein is reproduced the paper by Dr. Wilfred J. Ritz, Professor of Law, Washington and Lee University, which won first place in the 1962 Samuel Pool Weaver Constitutional Law Essay Competition conducted annually by the American Bar Foundation.

We draw extensively from this paper in this portion of the opinion. Dr. Ritz cited many times from Farrand, "The Records of the Federal Convention of 1787," 4 Vols. (Rev. ed. 1937).

While the article deals alone with the power of Congress, most of its contents apply equally to the Courts.

As pointed out by Dr. Ritz, the very simplicity of this language of the Constitution might tend to suggest casualness of draftsmanship. He promptly points out, however, that such was not the case, suggesting that the records of the convention, as discussed in Farrand, show that it was deeply concerned with problems relating to the election of officials of the Federal Government, adopting a plan for the indirect election of the President and Vice President by use of an electoral college. The convention provided: "Each state shall appoint in such manner as the legislature thereof may direct, a number of electors * * *", thereby leaving the method of selection and qualifications to the states, although Congress was authorized to establish the time of their choosing.

On May 29, 1787, in presenting the resolutions known as The Virginia Plan, which provided the basic framework of the Constitution, Edmund Randolph proposed a national legislature to consist of two branches, the members of the first to be elected by the people of the several states, and the members of the second to be elected by the first branch from persons nominated by the state legislatures. The national executive was to be elected by the national legislature.[40]

On May 31, sitting as a committee of the whole House, the convention approved the resolution calling for a national legislature to consist of two branches, and then considered and debated the resolution calling for election of the first branch by the people, adopting it by a vote of six states to two, with two states divided.[41] A few days later the convention reconsid-

[40] 1 Farrand, 20–21, 27–28.

[41] 1 Farrand, 46, 47–50, 54–55, 56, 60.

ered and again upheld popular election, this time by a vote of eight states to three.[42]

During consideration of The New Jersey Plan, still another attack on popular election was narrowly defeated, then another motion to reconsider was voted down by six states to four, with one divided.[43] As Dr. Ritz points out, on page 950 of the A.B.A. Journal for October, 1963, various aspects of the provision were debated with care until, finally, the provision was passed wtihout any state dissenting. The debate on the qualification of voters was thus ended. On August 9th, the convention granted to Congress the power to supersede state regulations *as to the time, place and manner of holding* elections. The debate shows that it was pointed out that the provision *had nothing to do with voter qualifications.*[44]

On September 8th, the convention named a committee of style, which made only one change which was adopted by the convention denying Congress any power over the place of election of senators. The provisions relating to elections were adopted and became a part of the completed Constitution.[45]

The article further points out that the Seventeenth Amendment ratified in 1913, providing for the popular election of senators, follows the pattern set forth in the original Constitution by providing that the electors in each state shall "have the qualifications requisite for electors of the most numerous branch of the state legislatures".[46]

It furtlier states that, except for the Fifteenth and Nineteenth Amendments, which place restrictions on

[42] 1 Farrand, 118, 124, 130, 132–138, 140–141, 142–144, 145, 147.
[43] 1 Farrand, 353, 358–360, 364–365, 367, 368.
[44] 2 Farrand, 229, 239–242, 244.
[45] 2 Farrand, 651, 653.
[46] Vol. 49, No. 10, A.B.A.J. page 951.

the qualifications the states may require of electors for state officials and so, indirectly, become limitations on the qualifications as defined in the original Constitution, "Otherwise, there are no constitutional restrictions on the qualifications the states may require of electors for state officials, and so also of electors of federal officials."[47] The article refers also to the "Poll Tax Amendment," emphasizing that it departed from the pattern of previous amendments in that a state is permitted to establish a different qualification for electors to the most numerous branch of its own state legislature than the state can establish for the election of federal officials. But the elimination of that qualification can be done by constitutional amendment alone.

It is clear, therefore, that in the ratification of the Seventeenth Amendment and of the Poll Tax Amendment, the Congress of the nation and the people have affirmed in this century that the power to establish or change the qualifications of electors for federal officials can be accomplished by constitutional amendment alone.

Dr. Ritz' estimate of the constitutional scheme for establishing the qualifications of electors for federal officials is thus stated at the conclusion of his article:[48]

> "* * * For this reason, the Constitution establishes the qualifications of electors for federal officials by a readily ascertainable and completely objective standard. This objective standard is beyond the power of the Federal Government to change, except by going to the states and the people to seek a change through the process of constitutional amendment. His-

[47] Id.

[48] 49 A.B.A.J., No. 10, page 954.

> tory demonstrates that when a change has been needed, the necessary constitutional amendments have been forthcoming. * * *"

The decisions of the Supreme Court teach a similar lesson. *Slaughterhouse Cases*, 83 U.S. 36; *Minor* v. *Happersett*, 88 U.S. 162; *United States* v. *Reese*, supra; *United States* v. *Cruickshank*, 92 U.S. 542; *Ex Parte Yarbrough*, 110 U.S. 651; *Swafford* v. *Templeton*, 185 U.S. 487; *Guinn* v. *United States*, 238 U.S. 347; *Newberry* v. *United States*, 256 U.S. 232; *Breedlove* v. *Suttles*, 302 U.S. 277; *Lassiter* v. *Northampton Board of Election*, supra.

XI.

At the risk of tedium, we feel that we ought to discuss briefly the provisions of Mississippi's Constitution and statutes which plaintiff would strike down. We find each of them to be within the power of the State and to be reasonable and valid. For convenience, we copy at this point in the margin the language of §§ 244 and 241(a) of the Constitution.[49] Attack

[49] "Section 244. Every elector shall, in addition to the foregoing qualifications be able to read and write any section of the Constitution of this State and give a reasonable interpretion thereof to the county registrar. He shall demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government.

"The person applying to register shall make a sworn, written application for registration on a form to be prescribed by the state board of election commissioners, exhibiting therein the essential facts and qualifications necessary to show that he is entitled to register and vote, said application to be entirely written, dated and signed by the applicant in the presence of the county registrar, without assistance or suggestion from any person or memorandum whatever; provided, however, that if the applicant is unable to write his application by reason of physical disability, the same, upon his oath of such disability,

is made also upon sixteen statutory enactments published in the Mississippi Code of 1942. We will not copy or refer to those at this point beyond this mention of them, but will bring forward the gist of the statutes as they are discussed.

It is appropriate at the outset of this portion of the opinion to set forth the basic principles which have guided the court in reviewing questions presented by the motion to dismiss:

> "The cardinal principle of statutory construction is to save and not to destroy. * * * as between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that which will save the act. Even to avoid a serious doubt the rule is the same."[50]

Courts should consistently seek an interpretation of a statute which supports constitutionality and avoid, where possible, holding that the statute is vague or indefinite.[51]

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shall be written at his unassisted dictation by the county registrar.

"Any new or additional qualifications herein imposed shall not be required of any person who was a duly registered and qualified elector of this state prior to January 1, 1954.

"The Legislature shall have the power to enforce the provisions of this section by appropriate legislation."

"Section 241–A. In addition to all other qualifications required of a person to be entitled to register for the purpose of becoming a qualified elector, such person shall be of good moral character.

"The Legislature shall have the power to enforce the provisions of this section by appropriate legislation."

[50] *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 30.

[51] *United States* v. *National Dairy Products Corp., et al.*, 372 U.S. 29.

When the terms of a statute are unambiguous the court may not, in construing it, speculate on probabilities of the intention of Congress.[52] The legislative history of an unambiguous statute is immaterial.[53]

> "The plain words and meaning of a statute cannot be overcome by a legislative history which, through strained processes of deduction from events of wholly ambiguous significance, may furnish dubious bases for inference in every direction."[54]

With these principles in mind we have examined the provisions of the constitutional and statutory sections here challenged to determine if they are ambiguous or uncertain. We find them to be plain, simple and straightforward. Their meaning and intention are transparent and completely unambiguous. We have, therefore, determined that their constitutional status cannot be changed by delving into supposed legislative intent, history or purpose.

It is likewise true that the method of application or administration of the statutes cannot affect the validity or invalidity of the statutes themselves. In *Giles* v. *Harris*, 189 U.S. 475 at 487, the Supreme Court stated:

> "If the sections of the constitution concerning registration were illegal in their inception, it would be a new doctrine in constitutional

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[52] *Merchants Insurance Co.* v. *Ritchie*, 5 Wall. 541.

[53] *United States* v. *McKesson & Robbins, Inc.*, 351 U.S. 305; *United States* v. *Oregon*, 366 U.S. 634.

[54] *Gemsco, Inc.* v. *Walling*, 324 U.S. 244, at 260. Cf. *Davis* v. *Schnell*, 81 F. Supp. 872, 878:

"*When a word or phrase in a statute or constitution is ambiguous*, it is the duty of the court, in construing the meaning of that word or phrase, to attempt to determine whether an exact meaning was intended and if so, to ascertain that meaning." (Emphasis added.)

> law that the original invalidity could be cured by an administration which defeated their intent."

The reverse effect has also been negated:

> "A statute may not be held void because of the action of an executive officer in applying its provisions. Even when there is an abuse of executive power against which the courts cannot relieve because of their inability to control administrative discretion, the act of Congress under which the action is taken is not rendered invalid any more than it is by action which is absolutely unauthorized."[38]

Indeed, any other method of statutory interpretation would permit members of the Executive Branch, at will, to make or unmake legislative enactments. We do not hold that arbitrary or discriminatory administration of a law which is valid on its face will not give rise to a right of action against the offending enforcement official; rather, we limit our holding to the determination that such administration cannot change the constitutional status of the law on its face.

XII.

The analysis of the Complaint required by the motions before us should properly begin with a consideration of the validity of Section 244 of the Mississippi Constitution. This same section in its present form was before this Court in *Darby* v. *Daniel*, 1958, 187 F. Supp. 170, from which no appeal was taken. We could very well fashion our opinion at this point by literally rescripting Sections I and II from this opinion, but such a procedure would be needlessly prolix. Suffice it to say that we adopt those two sec-

[38] *Duke Power Co.* v. *Greenwood County*, 91 F. 2d 665, 672; Affirmed 302 U.S. 485.

tions as our opinion here upholding the constitutionality of Section 244 on its face.[56] The authorities there cited are still completely valid support for the points made. The fact that plaintiff there was required to follow the administrative remedies available to him does not detract from the logic or correctness of the court's constitutional holding, which we approve as controlling the identical questions here presented.

Since the date of the *Darby* decision, the Supreme Court of the United States has again placed its stamp of constitutional approval on the use of a literacy test as a permissible voter qualification requirement. *Lassiter* v. *Northampton County Board of Elections*, 360 U.S. 45. The court there stated:

> "The ability to read and write likewise has some relation to standards designed to promote intelligent use of the ballot. Literacy and illiteracy are neutral on race, creed, color, and sex, as reports around the world show. Literacy and intelligence are obviously not synonymous. Illiterate people may be intelligent voters. Yet in our society where newspapers, periodicals, books, and other printed matter canvass and debate campaign issued, a State might conclude that only those who are literate should exercise the franchise. *Cf. Franklin* v. *Harper*, 205 Ga. 779, 55 S.E. 2d 221, appeal dismissed 339 U.S. 946, 70 S. Ct. 804, 94 L. Ed. 1361. It was said last century in Massachusetts that a literacy test was designed to insure an 'independent and intelligent' exercise of the right of suffrage. *Stone* v. *Smith*, 159 Mass. 413–414, 34 N.E. 521. North Carolina agrees. We do not sit in judgment on the wisdom of that policy. We can-

[56] Except for Subsection 4 of Section II, relating to newspaper exhibits, because that question is not before us here.

not say, however, that it is not an allowable one measured by constitutional standards." [57]

In *Trudeau* v. *Barnes*, 65 F. 2d 563, certiorari denied 290 U.S. 659, the Court of Appeals for the Fifth Circuit approved Louisiana's constitutional requirement embracing reading and interpreting its Constitution and that of the United States. However, on November 27, 1963, in the case of *United States* v. *State of Louisiana*, supra, a two-judge majority of a three-judge District Court panel hearing that case held that the *Trudeau* case was no longer valid in the light of the decision in *Davis* v. *Schnell*, supra, and "the more recent cases." They also pointed out that the *Trudeau* court, "perhaps because of the poor presentation of the case," did not have the "benefit" of evidence of discriminatory purpose and proof of "discriminatory *affect*" of the Louisiana interpretation test. We think this citation is invalid especially in view of the Supreme Court's holding in *Lassiter*.

We note, moreover, these differences between *United States* v. *Louisiana* and the case here presented, it being there contended:

1. The Louisiana Board of Registration has the power to remove *at will* any parish registrar of voters;

2. The parish registrar's whim alone determines who will be tested and who will be registered without testing;

3. No written records were made in most test cases, thus precluding the use of such records for check or review purposes;

[57] In note 7 appearing at 360 U.S. 52, the court pointed out that 19 states have some sort of literacy requirement as a prerequisite to voter eligibility. Mississippi's requirements are among those fully described without adverse comment or observation.

4. The Louisiana Registrar is vested with "raw power;"

5. The test prescribed by Louisiana's law has no rational relation to a legitimate governmental objective; it vests unrestrained discretion in the Registrar; it is subjective, unreasonable and is *incapable* of equal enforcement.

Their opinion equates the Louisiana constitutional provision with Alabama's Boswell Amendment, which was condemned in *Schnell* v. *Davis*, 336 U.S. 933. For the reasons set out in *Darby* and because of the legal and factual differences noted above, we cannot agree that Mississippi's Section 244 presents the same questions.

The Louisiana three-judge opinion also places much emphasis on its conception of the difference between "literacy" and "understand" and "interpretation." The latter two phrases are said to be words without definite meaning in the law and unlike the words "read" and "write." We cannot agree with the court's observations there. First of all, it seems clear to us that, when the Supreme Court stated "Literacy and intelligence are obviously not synonymous" in its opinion in Lassiter quoted above, it did not mean that tests which require a showing of comprehension, understanding or interpretation are not literacy tests. Rather, we believe the court there meant to demonstrate logically that an illiterate person could be intelligent, but that literacy was nevertheless a permissible standard for states to require of prospective electors. The dictionary defines the adjective "literate" as "instructed in letters; educated; specifically, able to read and write." It defines the noun "literate" as "one who can read and write." The transitive verb "read" is thus defined: "to go over, *especially, with apprehension of the meaning of*, as

characters or words; to take in the sense of, as of language, by interpreting the characters with which it is expressed. To utter aloud or render something written, especially so as to give an interpretation of its significance. To interpret; to discover the meaning of." The transitive verb "read" is defined: "to peruse or to go over *with understanding.*" (Emphasis added.)

Literacy must necessarily include understanding if it is to be the meaningful requirement of voter qualification which the Supreme Court discussed in *Lassiter*. If literacy encompassed only the ability orally to pronounce the syllables of a grouping of letters, without a corresponding set out in *Darby* and because of the legal and factual differences noted above, we cannot agree that Mississippi's Section 244 presents the same questions.

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"literate" as "one who can read and write." The transitive verb "read" is thus defined: "to go over, *especially, with apprehension of the meaning of,* as characters or words; to take in the sense of, as of language, by interpreting the characters with which it is expressed. To utter aloud or render something written, especially so as to give an interpretation of its significance. To interpret; to discover the meaning of." The transitive verb "read" is defined: "to peruse or to go over *with understanding.*" (Emphasis added.)

Literacy must necessarily include understanding if it is to be the meaningful requirement of voter qualification which the Supreme Court discussed in *Lassiter*. If literacy encompassed only the ability orally to pronounce the syllables of a grouping of letters, without a corresponding understanding or comprehension of their meaning, it would signify nothing. A person might look at a book or letter written in Spanish or French and have the ability to write off the words found there and to pronounce them orally, but if he knows nothing of the meaning or thought conveyed by those words, he cannot be said to be literate in Spanish or French. This reasoning draws added support by reference to 42 U.S.C. § 1971. In subsection (e) thereof the Congress recognized literacy *and* understanding as valid voter qualification requirements in two separate places in their directions to court appointed voting referees.[58]

[58] "Where proof of literacy or an understanding of other subjects is required by valid provisions of State law, the answer of the applicant, if written, shall be included in such report to the court; if oral, it shall be taken down stenographically and a transcription included in such report to the court."

"The applicant's literacy and understanding of other subjects shall be determined solely on the basis of answers included in the report of the voting referee."

The lack of an effective review procedure is another significant difference between the Louisiana case and Mississippi's Section 244. In Section IV of the opinion in *Darby*, the court discussed in detail the machinery which Mississippi had at that time provided for reviewing decisions of the Registrar.[9] Since the *Darby* decision, the only change in the review procedure has been to require the County Election Commissioners to consider both oral and documentary evidence. The statute still provides that the hearing is de novo. As we pointed out in *Darby*, "The heart of Mississippi's [registration] machinery lies in the right of any person to appeal to the County Election Commission."

We would also call particular attention to the fact that the words of 42 U.S.C. § 1971(d) permitting recourse to this Court, without regard to whether the party aggrieved shall have *exhausted* administrative or other remedies, were also before the court in *Darby*. Nowhere does the Bill of Complaint before us allege or aver that anyone who claims to have been denied the right to register even *began* the "simple," "cheap," administrative remedy open under Mississippi law, let alone pursued it or exhausted it.

For all of these reasons, we distinguish the case of *United States* v. *Louisiana*, supra, from the situation presented by the Complaint now before this Court. To the extent that its holdings may conflict with those here, we do not follow it.

Section 244 should be appraised in yet another way, as suggested by the Supreme Court in *Yick Wo* v. *Hopkins*, Sheriff, 118 U.S. 356. In that case, the

[9] A review procedure which the Court of Appeals of the Fifth Circuit, in *Peay* v. *Cox*, *supra*, characterized thus:

"The remedy is wholly administrative, simple, and cheap and ought to be exhausted plainly."

court suggested a simple but effective test to determine if a statute or ordinance vests arbitrary power in the officer charged with its enforcement and administration. This test is as follows:

> [In that case, persons who wished to operate laundries in wooden buildings were required to obtain the consent of the Board of Supervisors.]
>
> "* * * if an applicant for such consent, being in every way a competent and qualified person, and having complied with every reasonable condition demanded of any public interest, should, failing to obtain the requisite consent of the supervisors for the prosecution of his business, apply for redress by the judicial process of *mandamus* to require the supervisors to consider and act upon his case, it would be a sufficient answer for them to say that the law had conferred upon them authority to withhold their assent, without reason and without responsibility."

Because of the result of the test, the court held the statute there under consideration to be purely arbitrary.[60]

For sake of comparison, we call attention to the situation presented in *Schnell* v. *Davis*, supra, and the Boswell Amendment and its implementing statute requiring an applicant for voter registration to establish to the satisfaction of the Registrar that he or she was qualified. If we apply the mandamus test sug-

[60] This opinion has proven confusing to a number of courts, as evidenced by their varied descriptions of its holding. A careful reading of the opinion discloses that the Supreme Court *did not* hold the municipal ordinance unconstitutional. They did order Yick Wo released and the criminal charge against him dismissed, but the basis for their ruling was because the arbitrary statute was found to have been applied by the Board of Supervisors in an unconstitutional manner.

gested by *Yick Wo,* we would have this situation: a fully qualified applicant would request the court to mandamus the Registrar to place his name on the rolls. The Registrar could persist in his denial and resist the mandamus action by simply stating that he was not satisfied with the applicant's attempt to establish to him that he or she was qualified. This would be a complete answer to the mandamus proceeding without reason given and without further responsibility on the Registrar's part.

Under the provisions of Mississippi's Section 244, the situation is just the reverse. Here, if a qualified applicant has made a reasonable interpretation and been refused registration by either the Registrar or the County Election Commission, a mandamus action would most surely result in a requirement that the applicant be registered, because the question before the court would be: did the applicant give a reasonable interpretation?

Seeing no reason to depart from our opinion in *Darby* v. *Daniel,* we hold that Section 244 of the Mississippi Constitution is valid on its face and does not violate the Constitution or Laws of the United States.

The Complaint next charges that Section 241–A of the Mississippi Constitution violates the Constitution of the United States. Good moral character is a prerequisite for admission to practice before the Supreme Court of the United States,[61] the Court of Claims of the United States,[62] and United States Custom Court,[63]

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[61] Rule 5.
[62] Rule 77.
[63] Rule 10.

and each of the ten circuit Courts of Appeals.[64] Good moral character is a prerequisite for naturalization.[65] Connecticut,[66] Alabama,[67] Georgia,[68] and Louisiana [69] all require a prospective elector to be of good moral character or good character. In *Atkins*, supra, 323 F. 2d 733, the Court of Appeals for the Fifth Circuit approved the Alabama requirement of good moral character upon condition that a proper written examination is provided. The Mississippi statutes outlined supra provide very stringent requirements for such a hearing as to moral character. § 3217–01 through § 3217–14.

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[64] This variously appears in Rules 6, 7 or 8 of each of the Circuits except for the Fifth. In this Circuit, admission to practice before a District Court is required, and since this Mississippi district requires admission to the State Courts of Mississippi, this requirement is imported into the rules of the Fifth Circuit, at least for Mississippi practitioners in the Southern District.

[65] 8 U.S.C. § 1101, § 1427. It should be noted that although § 1101 sets out several criteria for determination of good moral character, it concludes with the statement: "The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character."

[66] Chapter 143, Section 9–12, Gen. Statutes of Conn., Rev. 1958.

[67] Constitution, Section 180, Article 8, Constitution of 1901.

[68] Constitution, Section 2–704 (6398) Paragraph IV. (This is one of the alternative provisions for those who cannot read and write.)

[69] Constitution, Article VIII, Section 1(c). See also La. Revised Statutes, Vol. 14, Ch. 1, Title 18, Section 31.

Mississippi presently requires good moral character of:

	Section
Taxicab Operators	3495
Incorporators of Banks	5156
Bank Examiners	5165
Architects	8632–09
Attorneys	8654
Barbers	8725
Dentists	8755
Embalmers	8782
Nurses	8816
Optometrists	8840
Pharmacists	8848
Physicians	8879
Podiatrists	8896
Accountants	8905
Veterinarians	[70] 8914–07

[70] All references are to section of the Mississipi Code of 1942, Annotated.

Counsel have pointed out in argument that a majority of states require good moral character of applicants for licenses as architects, attorneys, barbers, engineers, medical doctors, undertakers and embalmers, pharmacists, real estate salesmen, veterinarians and public accountants. These are but a few examples of the wide use that the term has found in statutory situations where legislative bodies sought to extend privileges to those citizens whom it thought worthy of confidence and trust. We mention these instances to demonstrate that good moral character has found widespread acceptance as a concise and meaningful description of an attribute of a desirable citizen. It seems to us to be self-defining. Any attempt by the legislature to have written a definition applicable to all applicants for voter registration or for any of the licenses mentioned would undoubtedly have ended in a cumbersome, wordy enactment which

could have added nothing to the inherent meaning of the words themselves and might well have detracted from their efficient an effective application."[11]

Requiring that applicants for registration as qualified electors be of good moral character is reasonable and is patently not discriminatory on the basis of race. We note that there is no allegation or charge that Negroes have bad moral character as a racial trait, even though such an allegation would not per se invalidate the enactment.[12] It does discriminate—but in a way that is in nowise unconstitutional. It bars those of bad moral character of every race from becoming voters. While it is beyond this Court's prerogative to commend the enactment of such a measure, we do have authority to say that such an enactment is entirely within the constitutional competence of the people of the State of Mississippi. It is a regulation calculated to improve the quality of the electorate though it might curtail its number. This may justifiably be thought to be a pathway to better government.

The Complaint objects to this requirement on the ground that, since more whites than Negroes are now registered, the greater numerical impact will fall on Negroes. This statistical argument is without legal merit.[13] It also lacks logical merit. The provision applies equally to every unregistered person of every race, now and for all time to come. It does not partake of the invalidity detected in *Guinn* v. *United*

[11] We agree with the court in *Raabe* v. *State*, 7 Ohio App. 119, when it stated that the phrase "good moral character" defines itself as accurately as the Legislature could define it by any other terms that it might employ along that line. Cf. Petition of Gani, 86 F. Supp. 683.

[12] *Williams* v. *Mississippi*, 170 U.S. 213.

[13] *Williams* v. *Mississippi*, supra; and *Snowden* v. *Hughes*, supra.

States, 238 U.S. 347, and *Lane* v. *Wilson,* supra. These cases involved situations where the electorate had by law been *exclusively* white. The new regulations applied practically exclusively to Negroes because the exemption was extended to all registered whites and their posterity in perpetuity. In *Lane* v. *Wilson,* the court frankly discusses the problems of the amendment offered to cure this situation solely in terms of the Negro race. The inevitable result of the provisions struck down was a racially discriminatory result. It is not so here. This enactment applies to new white and Negro registrants alike.

If statistics of present voter registration as compared to census figures can create a climate that would make an otherwise wholesome and valid enactment void because of race discrimination, then every other requirement governing voting—whether newly enacted or covered with antiquity—would be similarly void on the same statistical basis. Each such enactment making *any* requirement for registration would necessarily affect more of one race than the other and thus under plaintiff's theory, be invalid. If census figures are considered in the same sterile and unrealistic atmosphere, they demonstrate that race discrimination must be most flagrant in the states of the northern and midwestern portion of the nation because few, if any, Negroes can be found there.

Plaintiff contends that the good moral character requirement "facilitates" racial discrimination, but they do not say how, other than objecting to the lack of a statutory definition. It seems to us that a legislative definition, which could constitutionally bear more heavily on some of the undesirable racial traits peculiar to the Negro as a racial group, might constitute just such a "facility" instead of avoiding it. It is our view that the words are sufficiently direct and plain to be self-defining.

IV.

The Complaint next turns its attack to the statutory law of the State of Mississippi. It alleges that the provisions of the last paragraph of Section 3209.6 (and 3209.7), Mississippi Code of 1942, Annotated, are unconstitutional and void as being in conflict with and contrary to the requirements of Title III of the Civil Rights Act of 1960.[74] The provisions of this Act require election officers to retain certain voting records for a period of twenty-two months. The Mississippi statutes provide that, in cases where there is no appeal pending and where a particular application has been waived or abandoned, "the registrar is *not required* to retain or preserve any records made under the provisions hereof."

If this statute were to be construed as requiring registrars to destroy records under the circumstances named, it would at most be in conflict with the Federal Statute (42 U.S.C. § 1974). It does not do so. The words "not required to retain" should not be interpreted to mean "permitted to destroy." With this construction the State statutes do not in any way conflict with the Federal enactment. If a registrar does not comply with the provisions of Title III, he cannot justify his noncompliance on the basis of any compulsion derived from the Mississippi Act. It must be construed as permissive only, since it is readily susceptible of that construction. In fact, we cannot see that it is susceptible of any other reasonable construction. These concluding paragraphs of Sections 3209.6 and 3209.7 are constitutional.

Section 3213 of the Mississippi Code of 1942[75] makes it mandatory that an applicant complete all

[74] 42 U.S.C. § 1964–1974e.

[75] House Bill No. 900, 1962 Session.

blank spaces in the application form "properly and responsively" and sign the same, together with the required oath.

Section 3212.5 of the Mississippi Code of 1942 [16] requires a registrar to endorse the word "passed" on the application form of qualified applicants, makes it the responsibility of the applicant to make inquiry to determine whether he or she has passed, and provides for the endorsement of the words "failed" or "not of good moral character" to be endorsed on unsuccessful application forms.

It is charged that these two sections "facilitate" racial discrimination by establishing formal, technical or inconsequential errors or omissions as grounds for disqualification. We do not agree. The registrar is required by the statutes to make this endorsement on all forms of all applicants without regard to race. The statute also makes it the responsibility of all applicants to make inquiry to determine the status of their application. Again, these challenges are unaccompanied by any fact allegation that the statutes are directed against a racial trait. The proper and responsive completion by an applicant of a form is neutral on race, creed and color. The required endorsements cannot, in our opinion, constitute any facilitation of racial discrimination. If anything, they would hinder it by requiring a more complete record of the action taken by the registrar, which would be available in the event of a challenge to his action.

Another ground of invalidity involves the numerical effect of the statutes. We have previously discussed and rejected this ground as a vehicle by which unconstitutional deprivation may be established in

[16] House Bill No. 903, 1962 Session.

connection with our discussion of the good moral character requirements of Section 241–A of the Constitution. We adhere to those same views here.

It is next contended that these statutes convert the application form into a hypotechnical and unreasonable examination which constitutes an arbitrary restriction on the exercise of the "right to vote." It may be thought unnecessary to reiterate here the status of the Federal and State sovereignties in relationship to the right of suffrage, but it appears to us to be a matter of sufficient moment to warrant indulgence.

In *Minor* v. *Happersett,* 88 U.S. 162, the Court pointed out:

> "For nearly ninety years the people have acted upon the idea that the Constitution, when it conferred citizenship, did not necessarily confer the right of suffrage."

In the case of *United States* v. *Reese,* 92 U.S. 214, the court stated:

> "The Fifteenth Amendment does not confer the right of suffrage upon anyone."

In *McPherson* v. *Blacker,* 146 U.S. 1, it was stated:

> "The right to vote intended to be protected refers to the right to vote as established by the laws and constitution of the State."

In *Pope* v. *Williams,* 193 U.S. 621, the court stated:

> "The privilege to vote in any State is not given by the Federal Constitution, or by any of its amendments. It is not a privilege springing from citizenship of the United States * * * In other words, the privilege to vote in a State is within the jurisdiction of the State itself, to be exercised as the State may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made

between individuals in violation of the Federal Constitution."

As recently as *Lassiter* v. *Northhampton County Board of Election Commissioners,* supra, the court stated:

> "The states have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised."

We assume that the State of Mississippi must believe that the information required on its voter application forms is proper and necessary information to determine the qualified or unqualified status of the applicant under its requirements. If it did not so believe, then the information should not be requested; but, believing it to be required, it seems to us that it is completely within its prerogative to demand that the form be properly and responsively completed and that the registrar make a full written record of his actions thereon. If it is an exacting examination,—which we do not determine it to be—it is one which the statute requires to be administered without regard to race, creed or color. It is beyond the jurisdiction of this Court to question.

We do not find that these statutes vest unlimited discretion or arbitrary power in the registrar. The words "properly" and "responsively" indicate to this Court a definite enough standard for intelligent and consistent application. The completion of the oath and signature also appear to be normal requirements on their face. No tricky application form is alleged or exhibited. If it does, in fact, operate to "trip" applicants into disqualifying omission, it again operates indiscriminately of race or color. Even if we thought it were an unwise requirement, we cannot for that reason alone find it to be unconstitutional. After a careful review of the statutes themselves in the

light of all objections made, we are of the opinion that Section 3213 and Section 3212.5 of the Mississippi Code of 1942 are constitutional.

The next attack is made upon Section 3212.7 of the Mississippi Code of 1942[77] and Section 3217–01 through 3217–13 of the Mississippi Code of 1942.[78] Section 3212.7 requires the registrar to publish the name and address of every applicant for registration to vote, for two consecutive weeks. The cost of such publication is to be paid out of the general fund of the county. Fourteen days after the date of the last publication must be allowed by the registrar for challenge by any qualified elector of the county. After this period the registrar is required to proceed to determine the applicant's qualifications.

Sections 3217–01 through 3217–13 prescribe the procedure for challenges and hearings concerning any challenges made.

These two statutes are alleged to be unconstitutional because they vest power and authority in white citizens to harass Negroes. Even so, it is likewise true that the statutes vest power and authority in Negro citizens to harass whites, in Negro citizens to harass Negroes, and in white citizens to harass whites. The choice as to whether to exercise the power conferred or not is one of purely private decision not subject to the mandates of the Fourteenth or Fifteenth Amendments. With regard to the contention that no objective standard is provided to limit the grounds of challenge, we disagree. The grounds are limited to the good moral character of the applicant and other requirements which the applicant must meet in order to be qualified to register to vote.

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[77] House Bill No. 822, 1962 Session.

[78] House Bill No. 904, 1962 Session.

The challenge is made that the requirements are onerous, arbitrary and unreasonable. These challenges are directed to the legislature's wisdom in the enactment of the statute and not to any permissible grounds of constitutional objection. We do not see in the grant of authority to the registrar to take the matter of a challenge under advisement any unlimited power to forestall registration on a racial basis. Surely the statute contemplates and must be interpreted to require reasonable action on the part of the administrative officer in the discharge of the duties conferred upon him under the authorities previously mentioned.[79] We cannot presume that he will not correctly and impartially render each citizen his due.

Here again we have statutes whose wisdom we are not free to debate. The State of Mississippi could certainly feel that each community should be advised of the names and addresses of its members who seek through the exercise of the franchise to control its political fate. It is certainly within the state's power to determine that additional solemnity and formality should be added to the act of application for registration. We are unable to say that the requirements of these statutes bear no reasonable relationship to a legitimate state interest. We, therefore, hold Section 3212.7 and Sections 3217–01 through 3217–13 to be valid and constitutional.

The Complaint might also be interpreted to challenge Section 3232 of the Mississippi Code of 1942[80] and Section 3209.6 of the Mississippi Code of 1942. Section 3232 was amended so as to eliminate the requirement for designation of the race of voters in county poll books. Section 3209.6, in addition to

[79] Cf. *Snowden* v. *Hughes*, supra.

[80] House Bill No. 901, 1962 Session.

permitting destruction of records, was amended so as to make provision for the application form to contain a demonstration of good moral character.

In view of our ruling on the constitutionality of Section 241–A requiring good moral character as a prerequisite to registration, we deem it unnecessary to discuss further the contentions of the Complaint as to the last Code section. As to the section requiring the elimination of the designation of race from the poll books, we could state categorically that the new statute is constitutional, but it would be further pertinent to observe that this appears to the Court to be a situation where the state could be thought to be on the "horns of a dilemma." If it left the designation of race a part of its requirements, it would be subject to criticism for making a record of race where the race of the elector was immaterial. Now, having acted to remove reference to race, it finds itself criticized for having done so.

The Supreme Court, this term, held that a state statute[51] requiring that, in all primary, general or special elections, the nomination papers and ballots shall designate the race of candidates for elective office, violates the equal protection and due process clause of the Fourteenth Amendment or the Fifteenth Amendment to the Constitution of the United States.[52]

We hold Section 3232 and Section 3209.6 to be valid and constitutional.

In all of these statutory areas, we believe the question of validity must turn on a determination of the power of the state, not its supposed secret intentions or presumed improper motives. In the light of our comments above, we believe that it would be no more fitting to inquire into the motive or object of the

[51] Louisiana Revised Statutes (1960 Supp.) § 18:1174.1.

[52] *Anderson* v. *Martin*, Jan. 13, 1964, —— U.S. ——.

legislature than it would be to permit such an inquiry to be made as to the motives of the judges of a court for making a decision, or the executive branch for taking or withholding executive action in any given situation.[83] As Mr. Justice Black cautioned in the case of *Everson* v. *Board of Education of Ewing Township*, 330 U.S. 1:

> "But we must not strike that state statute down if it is within the state's constitutional power even though it approaches the verge of that power. See Commonwealth of Massachusetts, Holmes, J., supra, 207 U.S. at 85, 88, 28 S. Ct. 26, 27, 28."

And see the discussion of this question in *Darby*, supra, 168 F. Supp. at pp. 176, et seq., and in *Palmer* v. *Ohio*, 248 U.S. 32; *Beers* v. *Arkansas*, 20 Howard 527; *Railroad Co.* v. *Tennessee*, 101 U.S. 337; and *Hans* v. *Louisiana*, 134 U.S. 1.

We would hardly feel that a proper sense of proportion was being observed if we did not draw out this already much too long opinion sufficiently to say that those who speak for the United States in this case do not propose to leave Mississippi's Constitution and statutes wholly unrecognized. After having importuned this Court to strike down substantially all which the people and the legislature have written during the tedious, sometimes tragic, years in which they have endeavored to maintain a government of laws, the representatives of this Indestructible Union here pray that this Court set up a substitute system of voting qualifications for Negroes, asking that we

> "7. Order said defendants to register as a voter any Negro applicant for registration who

[83] *Fernandez* v. *Weiner*, 326 U.S. 320; *Sonzinsky* v. *United States*, 300 U.S. 506. See also the article and cases cited in Footnotes 21–23 of the opinion in *Darby* v. *Daniel*, supra.

possesses the following qualifications for registering to vote and none of the disqualifications as set forth in the Mississippi Constitution of 1890:

"(a) He is a citizen not less than twenty-one years of age;

"(b) He has been a resident of the state, county and election district for the period prescribed by Mississippi law;

"(c) He is able to read;

"(d) He has not been convicted of any disqualifying crimes enumerated in the Constitution and laws of Mississippi and is not insane."

The Complaint, as amended, thus fails to state a claim upon which any relief can be granted and should be dismissed with prejudice, and the relief prayed for should be denied. A judgment accordingly, with costs, will be entered.

BEN F. CAMERON,
Circuit Judge.

WILLIAM HAROLD COX,
District Judge.

Judge Brown dissents and will, at a later time, file a dissenting opinion.

Judge Cox concurs in the foregoing opinion and reserves the right, at a later date, to file a specially concurring opinion.

Cox, *District Judge,* Concurring:

The majority opinion of the Court in this case, prepared by Honorable Ben F. Cameron, United States Circuit Judge, very forcefully and correctly decided this case, and I unconditionally joined in that opinion and in executing the consequent judgment of the Court, but wish to add my concurrence therein as herein expressed.

Initially, and as a fundamental proposition of universal application, the United States had no authority

to institute or maintain this suit in the absence of express statutory authorization therefor. That position was readily admitted by counsel at the bar, but it is contended that 42 USCA § 1971 expressly provided such necessary authorization for this suit. A careful analysis of that section of the statute will reveal the fallacy of that contention. Indeed, the United States was expressly granted authority to bring certain suits against certain *persons* for preventive relief against violation of certain Civil Rights of others. The state of Mississippi is simply not such a person as was envisioned by that statute. It was not designed, or intended to grant the national sovereign any carte blanche authority to arbitrarily and capriciously select any law, or package of laws of a state which it desired invalidated, and to have declaratory relief by a test in such manner of the constitutionality thereof.

The suability of the sovereign state of Mississippi by the United States in this case presents that serious question at the very threshold of this suit. Contrary to the dissent herein, no question is presented, or relied on by anybody in this case as to any immunity afforded a state by the 11th Amendment to the Federal Constitution. It is perfectly clear in this case that the United States must find express authority in 42 USCA § 1971(c) to bring this suit, or it is without authority in this case to sue the state of Mississippi. This Congressional Act very carefully limited the right of the United States to bring a suit under the act against a *person* offending another person by depriving him of a right under the act, and for *preventive* relief. Ordinarily, the term "person" does not include a state or a municipal corporation, unless the statute itself makes the intention to do so very clear. Significantly, the last paragraph of § 1971(e)

contains its own lexicon. Congress made it clear that the word "vote" meant all things prerequisite to voting, including registration where necessary to vote, and casting the ballot and having it counted. Other well known words and phrases were specifically defined to comply with the legislative intent. The Congress knew that a state is ordinarily not considered a person within the purview of legislation of this character, and it did not deem it proper to carry out the legislative intent to make this act specifically to extend to a sovereign state as a person. This act clearly provides that: "Whenever *any person* has engaged, or there are reasonable grounds to believe that *any person* is about to engage in any act or practice which would deprive *any other person* of any right or privilege secured by subsection (a) or (b) of this section," then the Attorney General may institute the civil action in the name of the United States for *preventive* relief under this act. Then Congress provided that in such a suit the United States shall be liable for costs *the same as a private person.* The act provides that if a state official has violated either paragraph (a) or paragraph (b) of that section that the state may be made a party to the suit (not for any relief against it) but as a mere conduit or procedural vehicle to preserve jurisdiction where offending officials have died, or resigned as happened in the Alabama situation which was met by this provision in the act. But the state of Mississippi is simply not a *person* within any concept of this act, and is not suable in this case. In *Sims* v. *U.S.,* 359 US 641; 79 S.Ct. 641, it is said that "whether the term 'person' when used in a Federal statute includes a state cannot be abstractly declared, but depends upon its legislative environment, *Ohio* v.

Helvering, 292 US 360, 370; 54 S.Ct. 725, 727; *State of Georgia* v. *Evans,* 316 US 159, 161; 62 S.Ct. 972, 973." In *Monroe* v. *Pape,* 365 US 167; 81 S.Ct. 473, the Court held that a municipal corporation was not within the ambit of a statute which related to a person who might deprive a citizen of a civil right under 42 USCA § 1983. That same rule was followed by the Court in *Egan* v. *City of Aurora,* 365 US 514; 81 S.Ct. 684, where the Court held that a municipality is not a person within the meaning of said act. Then in *US* v. *Alabama,* 171 F. Supp. 720, the district court in speaking of the 1957 Civil Rights Act, said that a person did not include or mean a sovereign state. On appeal of that decision in *US* v. *Alabama,* (5CA) 267 F. 2d 808, the Court very strongly reiterated and amplified that same view. The Court in that case said that the state of Alabama was not a person within the purview of the 1957 Civil Rights Act appearing as 42 USCA § 1971(c). Yet, almost a year later when the present act was amended in 1960, no attempt was made by Congress to make any change in the first two sentences of this act which appeared exactly in the same verbiage as in the 1957 Civil Rights Act.

A statutory intent to authorize the United States to sue a sovereign state is not to be lightly inferred. Such authority must be found in a statute in the very clearest terms before a Federal Court will assume jurisdiction of a sovereign state. In *US* v. *Alabama,* supra, Judge Hutcheson as chief judge, speaking for the Court at page 811, said: "Absent such specific conferring of jurisdiction, a federal court would not, indeed could not assume jurisdiction over a sovereign state without a precedent determination that, though the jurisdiction had not been expressly

conferred, the language of the invoked statute carried the necessary, the unavoidable implication that the congress upon the gravest considerations and after the utmost thought and deliberation had intended to and did confer it."

The State Board of Election Commissioners (composed of the Governor, the State Attorney General and the Secretary of State) are assigned statutory duties in connection with the preparation of forms of applications which the registrars use in testing the qualifications of an applicant to register to vote. These commissioners are thus acting in a legislative capacity in the discharge of such function and are, therefore, not ordinarily amendable to suit. But their duties have been discharged when they release these forms of applications for use by the registrars in the counties; and the Mississippi State Board of Election Commissioners thereafter have absolutely nothing to do with the registration of voters, or the conduct of any election. The complaint as to the state of Mississippi, and as to said State Board of Election Commissioners is, therefore, clearly without any possible merit on its face. The complaint does not aver that the State Board of Election Commissioners have done anything, or threatened to do anything other than prepare those official registration blank forms exactly as directed by the Mississippi Legislature.

The gravamen of this complaint in its entirety is that two sections of the Mississippi Constitution, and six state statutes implementing those constitutional sections are all unconstitutional and void in the opinion of the United States. The acts and laws under attack in this case are Mississippi Constitution 1890,

§ 241–A [1] and § 244 [2] and six state statutes (all referred to herein as statutes) designated as H.B. 900 (Chapter 570, Mississippi Laws 1962),[3] H.B. 901

[1] § *241–A*. In addition to all other qualifications required of a person to be entitled to register for the purpose of becoming a qualified elector, such person shall be of good moral character. The Legislature shall have the power to enforce the provisions of this section by appropriate legislation.

[2] § *244*. Every elector shall, in addition to the foregoing qualifications be able to read and write any section of the Constitution of this State and give a reasonable interpretation thereof to the county registrar. He shall demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government. The person applying to register shall make a sworn, written application for registration on a form to be prescribed by the state board of election commissioners, exhibiting therein the essential facts and qualifications necessary to show that he is entitled to register and vote, said application to be entirely written, dated and signed by the applicant in the presence of the county registrar, without assistance or suggestion from any person or memorandum whatever; provided, however, that if the applicant is unable to write his application by reason of physical disability, the same, upon his oath of such disability, shall be written at his unassisted dictation by the county registrar. Any new or additional qualifications herein imposed shall not be required of any person who was a duly registered and qualified elector of this state prior to January 1, 1954. The Legislature shall have the power to enforce the provisions of this section by appropriate legislation.

[3] § *1*. Person not to register unless he can read and write. A person shall not be registered unless he be able to read and write any section of the constitution of this state and give a reasonable interpretation thereof to the county registrar. He shall demonstrate to the county registrar a reasonable understanding of the duties and obligtions of citizenship under a constitutional form of government; he shall also demonstrate to the county registrar that he is a person of good moral character. The person applying to register shall make a sworn, written application for registration on a form prescribed by the state board of election commisisoners, exhibiting

(Chapter 574, Mississippi Laws 1962);[4] H.B. 905
(Chapter 569, Mississippi Laws 1962),[5] H.B. 904

therein the essential facts and qualifications necessary to show that he is entitled to register and vote, said application to be entirely written, dated and signed by the applicant in the presence of the county registrar, without assistance or suggestion from any person or memorandum whatever; provided, however, that if the applicant is unable to write his application by reason of physical disability, the same, upon his oath of such disability, shall be written at his unassisted dictation by the county registrar. As originally enacted each provision is and it is further declared to be mandatory and not directory; no application should have been and shall not be approved or the applicant declared qualified to register to vote unless all blank spaces in the application and the oath are properly and responsively filled out by the applicant; and the oath, as such, shall be signed by the applicant; and the application, as such, shall be signed separately by the applicant at the places thereon provided for applicant's signature. Provided, however, the provisions herein imposed shall not be required of any person who was a duly registered and qualified elector of this state prior to January 1, 1954; except that from and after the effective date of this act no person shall be permitted to register unless he demonstrates to the county registrar that he is of good moral character as required by the provisions of § 241-A of the Constitution of Mississippi. *§ 2.* Should any provision of this act be held to be unconstitutional or otherwise invalid for any reason, such holding shall not be construed to affect the validity of any other part or portion of this act.

[4] *§ 1.* That Section 3232, Mississippi Code of 1942. Recompiled, be and the same is hereby amended to read as follows: § 3232. Form of poll book. The poll book of each election district shall have printed or written at the top of each page words to designate the election district for which it is to be used, and shall be ruled in appropriate columns, with printed or written headings, as follows: Date of registration; name of electors; age; and a number of blank columns for the dates of elections. All who register within four months before any regular election shall be entered on the poll books immediately after such election, and not before, so that the poll

(See footnote 5 on p. 100-102)

books will show only the names of those qualified to vote at such election. When election commissioners determine that any elector is disqualified from voting, by reason of being delinquent for poll tax, removal from the precinct, or other cause, that fact shall be noted on the registration book and his name shall be erased from the poll book. After disqualification for delinquency has been removed in subsequent years, the name of such elector shall be reinstated on the poll book without re-registration, and that fact shall be noted in the registration book.

[5] § *1.* The state board of election commissioners shall, as soon as practicable and thereafter at such times as it may deem advisable, consistent with the Constitution, prepare a series of application blanks, including the oath of the person offering to register, in compliance with Section 242 of the Constitution of this state, and including blank forms for furnishing of information, showing date of application, which shall be the date of registration if such applicant be approved for registration; name of applicant; age; occupation; where business carried on; if employed, by whom; place of residence; date such residence began; previous place of residence; what oath applicant takes; if more than one person of the same name in precinct, by what name applicant wishes to be called; whether applicant has been convicted, and if so, when and where, of any of the crimes referred to in Section 241 of the Constitution of Mississippi, which are bribery, theft, arson, obtaining money under false pretenses, perjury, forgery, embezzlement and bigamy, and the moral character of applicant; all designed to test the ability of applicants for registration to vote to read and write any section of the Constitution of this state and give a reasonable interpretation thereof, and demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government; and to demonstrate to the county registrar that applicant is a person of good moral character as required by Section 241–A of the Constitution of Mississippi. Such applications shall be designed to exhibit the essential facts and qualifications necessary to show that such person is entitled to register and vote. Copies of such application blank forms shall be delivered to the county registrar of each county, and such copies shall be supplied to each county registrar as needed. The oath required by Section 242 of the Constitution shall be administered by the registrar. The

board of supervisors is authorized to make proper allowances for office supplies reasonably necessary by this act. If no appeal has been or is taken as provided by law from the ruling of the registrar upon any application for registration, or if any application for registration is abandoned or waived by the applicant therein by making another application for registration before any final judgment or decision has been rendered on any prior application, or otherwise waived or abandoned same, the registrar is not required to retain or preserve any record made unde the provisions hereof. *§ 2.* Registrar to register voters. The registrar shall register on the registration books of the election district of the residence of such person anyone appearing before him, and being, upon examination found, in compliance with Section 244 of the Constitution, as amended, and in compliance with Section 241–A of the Constitution of Mississippi to be entitled to be registered as an elector, upon such person taking and subscribing the oath required by Section 242 of the Constitution of Mississippi; but persons who may be entitled to register under the provisions of Section 251 of the Constitution of Mississippi, who would be otherwise disqualified by reason of age, may take the oath as modified by that circumstance, and the subscription of the oath shall be by the elector writing his name in the proper column in the registration book. *§ 3.* Form of registration books. The registration books are to be in the following form: They shall have printed at the top of the pages the oath prescribed by Section 242 of the Constitution of Mississippi, and beneath shall be ruled appropriate columns, the headings of which shall be printed respectively, as follows, viz: date of registration; names of electors; age; occupation; where business carried on; if employed, by whom; place of residence in the district; what oath does elector take? If more than one person of same name in district, by what appellation does elector wish to be called? Has the elector met all of the requirements of Section 244 of the Constitution of Mississippi, as amended? Has the elector met all of the requirements of Section 241–A of the Constitution of Mississippi? Signature of elector; remarks. In the column headed "What oath does elector take?" the registrar shall write the word "general," if the elector take the general oath prescribed, the word "minister's," or "minister's wife," if he or she take the oath as modified by the parenthetical sentence thereon; and the words "special as to age," if the elector will, as provided in Section 251 of the Con-

(Chapter 573, Mississippi Laws 1952),[6] H.B. 822 (Chapter 572, Mississippi Laws 1962),[7] and H.B. 903

stitution of Mississippi, become of age before the election next after he proposed to register; and in the column headed, "Has the elector met, etc.?" if he has met all the requirements of Section 244 of the Constitution, as amended, and Section 241–A of the Constitution of Mississippi, the word "yes" shall be entered. And provided further, that when a new registration is ordered in a county that new registration books shall be purchased to comply with the form prescribed herein. And provided further, that persons registered in any such new registration books who were duly registered and qualified electors of this state prior to January 1, 1954, shall be entitled to register in such new registration books in accordance with the requirements of law in existence on said date; except that all persons registering after the effective date of this act shall be of good moral character as required by Section 241–A of the Constitution of Mississippi. § 4. Should any provision or section of this act be held to be unconstitutional or otherwise invalid for any reason, such holding shall not be construed to affect the validity of any other part or portion of this act.

[6] § 1. The sufficiency and the truthfulness of the statements made in the application to register to vote, and the contents thereof, and the good moral character of an applicant to register to vote are material, and this act is adopted to further enforce the requirements to register to vote as set out in the Constitution and laws of the state of Mississippi. § 2. Any qualified elector of the county may challenge the good moral character of any applicant and any other requirement of any applicant to vote within fourteen (14) days after the date of the last publication of the name and address of such applicant by filing with the registrar an affidavit in duplicate setting forth facts upon which the challenge is based. Upon the filing of any such challenge the registrar shall within seven (7) days thereafter, exclusive of the date of the filing of such challenge, send to applicant by certified mail, addressed to him at the address shown on the application, one copy of such affidavit, and notice of the date, time and place where the registrar will hold an administrative hearing to determine the sufficiency of the application or challenge. § 3. The registrar, who is an administrative officer of the county in which he

(See footnote 7 on p. 104)

serves as registrar, is hereby vested with full power and authority to hold and conduct such administrative hearing and render his decision thereon; he may render his decision at the completion of the hearing or may take the matter under advisement just as a court may do. §4. Such hearing shall be held in the office of the registrar or at some other place designated by the registrar in the county courthouse, and shall be set within a reasonable time after the date of the mailing of said notice. If there be two (2) judicial districts in the county, then the hearing shall be had in the courthouse of the judicial district in which the application to register is made. On his own motion or for good cause shown, the registrar may change the date and time of such hearing. At such hearing by the registrar he may hear oral and documentary evidence in support of, in challenge of, or denial of, the sufficiency of the application, the good moral character of the applicant, and as to any other requirement which applicant must meet in order to be qualified to register to vote. §5. The registrar may issue subpoenas to be served by the Sheriff of the county to secure their attendance as witnesses and the production of documents at such hearing. Obedience to any such subpoena may be secured by the registrar by filing with the Circuit Judge, in term time or in vacation, a petition seeking enforcement, and the person subpoenaed shall obey the order of the Circuit Judge made therein. The Circuit Judge, in vacation or in term time, is hereby vested with jurisdiction to hear and determine such petition, make proper orders thereon and issue appropriate process, and said petition shall be heard at such time and place as he may specify on five (5) days' notice to all parties. §6. The registrar shall administer to the witnesses who testify in said administrative hearing the same oath as is used in the trial of cases in the Circuit Court. §7. The registrar shall require all testimony taken before him to be taken down by a competent stenographer or reporter, and a transcript thereof shall be filed with and retained by the registrar as a record of his office. All costs of such proceedings may be taxed by the registrar in accord with the manner and practice pertaining to costs in the Chancery Court under the laws of this state. §8. If the decision of the registrar be that the applicant is qualified to register under the Constitution and laws of the state of Mississippi, he shall be forthwith registered; but if the registrar finds that applicant is not qual-

ified under said Constitution and laws to be registered, he shall not register the applicant but shall mark his application "failed;" but if he finds that applicant is not of good moral character he shall so endorse the application and state the facts upon which the finding of lack of good moral character is based. § *9*. At such hearing held by the registrar, applicant and any person or persons challenging the truthfulness or sufficiency of the application may be represented by counsel, but applicant and any challenger may appear pro se in and on his own behalf if they choose. Witnesses may be examined or cross-examined as in trials in the Circuit Court. § *10*. An appeal may be taken to the Board of County Election Commissioners by any persons against whom the registrar may decide within the same time and in the same manner as is now provided for an appeal from registration or denial of registration by the registrar. § *11*. If the applicant or any challenger does not appear at the time and place set by the registrar for the hearing of any challenge, the registrar may, in his discretion, reset the hearing or may proceed and determine whether applicant is or is not, as the case may be, qualified under the Constitution and laws of the state of Mississippi to register to vote. The person or persons against whom the registrar decides may appeal as above provided just as if a hearing had been held. § *12*. Strict rules of evidence shall not be enforced at the hearing herein provided for. Witnesses may be examined by the applicant or his attorneys, and by the challenger or challengers or their attorneys. § *13*. The provisions of this act are intended to provide an additional administrative method whereby third parties may challenge the sufficiency of any application to register and the good moral character of an applicant, and are not intended to affect the right, duty and authority of the registrar to determine such qualifications, as now provided by law, if no challenge is made by any third party.

[7] § *1*. Within ten (10) days after the receipt by the registrar of any application to register to vote and before consideration is given to the sufficiency of the application, the registrar shall deliver for publication in a newspaper hereinafter described the name and address of such applicant as stated in said application and shall cause same to be published once each week for two (2) consecutive weeks in a newspaper having general circulation in the county where such applicant has

(Chapter 571, Mississippi Laws 1962)[8] set out in the footnotes for ready access thereto and analysis thereof.

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applied to register, but if no such newspaper is published in such county, then publication shall be made in some newspaper published in an adjoining or other county but of general circulation in the county of the residence of the applicant. § *2*. The said name and address shall be published in said newspaper under a heading entitled: "Applicants for registration to vote." When said publication shall have been completed, proper proof of publication shall be furnished to the registrar and same shall be preserved as a record of his office. The cost of the publication and proof thereof shall be paid by the county out of its general fund at the rate for legal notices. § *3*. If within fourteen (14) days, exclusive of the date of the last publication of the name or names aforesaid, after the date of the last publication, no qualified elector of the county, other than the registrar, shall have challenged, in the manner prescribed by law, the good moral character of applicant and any other requirement which applicant must meet in order to be qualified to register to vote, the registrar shall within a reasonable time, under the circumstances, determine whether applicant has complied with the Constitution and laws of the state of Mississippi to entitle him to register to vote.

[8] § *1*. When the registrar shall have determined that an applicant to register to vote has qualified to register under the Constitution and laws of the state of Mississippi, he shall endorse upon the application the word "passed," or a word or words of equivalent meaning, and the applicant shall be entitled to register upon his request for registration made in person to the registrar, or deputy registrar, if a deputy registrar has been appointed. As is now required by law, no person other than the registrar or a deputy registrar shall register any applicant. It shall be the responsibility of an applicant for registration to make inquiry of the registrar, or the deputy registrar, if a deputy registrar has been appointed, to determine whether such applicant has passed and is qualified to register. § *2*. If applicant be of good moral character, but has not otherwise complied with the Constitution and laws of this state to entitle him to vote, then the registrar shall endorse upon the application the word "failed," without specifying the reason or reasons

The complaint as to the registrar of Amite County, the registrar of Claiborne County, the registrar of Pike County (all within the Southern District of Mississippi, but in different divisions of this district; and against the registrar of Coahoma County, the registrar of LeFlore County and the registrar of Lowndes County, all in different divisions of the Northern District of Mississippi), presents a much more difficult question. Surely, § 1971(c) authorized the United States to bring a suit against a registrar for any violation, or any threat of violation of the Civil Rights of a citizen through discrimination against that citizen in any manner, or to any extent by any sort of device however clever or concealed it may be.

It must be remembered that this is not a voting case. It is a registration case, but registration is a condition precedent to voting in Mississippi and the United States, as plaintiff, may seek preventive relief

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therefor, as so to do may constitute assistance to the applicant on another application. § 3. If applicant is otherwise qualified to register, but fails to demonstrate to the registrar that applicant is of good moral character and the registrar so finds, the registrar shall endorse upon the application the words "not of good moral character," and shall state the facts or reasons why he finds applicant not to be of good moral character. § 4. If applicant is not otherwise qualified under said Constitution and laws and fails to demonstrate that he is of good moral character, then the registrar shall endorse upon the application the word "failed," and may endorse thereon the words "not of good moral character," but if he endorses the latter on the application he shall state the facts and reasons why he finds applicant not to be of good moral character.

NOTE.—The foregoing footnotes and this opinion refers to the House Bills under attack as set out in the complaint by reference to the Chapter in the Session Laws where they appear and are the same as those referred to as being sections of the Mississippi Code 1942 as contained in the majority opinion. Each section of the Session Acts now appears as a separate section of the Code though such references are to the same laws.

against a registrar as a person (as an official, indeed, but not as a private individual) under § 1971(c) on the basis that such registrar is doing or is threatening to do something in violation of 42 USCA § 1971 (a). It is not stated in the complaint that either one of these registrars ever did, or threatened to do anything in violation of that statute, but it is stated that these registrars were literally administering and enforcing, as written, this package of eight laws which this suit was filed to invalidate. Significantly, at the bar, counsel for the government disavowed any invention, or purpose by the suit to charge any discrimination whatsoever in the administration of these statutes by either one of these registrars. But paragraph 5 of the prayer in the original complaint requested the Court to: "Make a finding that the defendant county registrars have deprived negro citizens of the right secured by 42 USCA § 1971(a); and that such deprivations have been and are pursuant to a pattern and practice of racial discrimination." Nowhere in the complaint is to be found any charge, or statement of any ultimate fact to the effect that either one of the sections of the Mississippi Constitution (§ 241–A and § 244) or either one of the statutes implementing said sections (Mississippi Laws 1962, Chapters 569, 570, 571, 572, 573 and 574) were wrongfully, or erroneously, or discriminatorily applied in any manner to any colored person. The gravamen and sole basis of the action and claim against these registrars is that they very properly administered and applied these laws which are alleged to be unconstitutional, and that thereby a claim has accrued to the United States. The plaintiff accordingly asserts a demand, not for preventive relief, but for relief which could only be provided by a Mississippi legislative enactment as the opinion in chief sets forth and demonstrates.

Precisely, the claim against these registrars is that they are alleged to be engaged in administering these constitutionally invalid laws. The claim being more specifically that since only 5% of all adult negroes are registered, and since approximately 67% of all adult white citizens are registered, that the disparity and imbalance resulting from such circumstance will necessarily operate with discrimination against negroes. The fallacy of that claim is readily apparent. The law and its application and enforcement with an even hand, and completely without regard to race or color, simply defies any tenable criticism of its constitutional validity.

The case of *Darby* v. *Daniel,* 168 F. Supp. 170, was a carefully studied and prepared opinion of a three judge court composed of three distinguished Federal jurists from Mississippi. That decision settled the law as to the constitutionality of § 244, Mississippi Constitution 1890 and implementing statutes and decided it correctly and no appeal was taken. There, the Court said: "We hold, therefore, that plaintiffs have wholly failed to establish that the amendment to § 244 of the Mississippi Constitution of 1890 is void on its face, or because it was the product of base motives. We hold, on the other hand, that said amendment and the statutes passed in connection with it are valid on their face and in fact, are a legitimate exercise by the state of its sovereign right to prescribe and enforce the qualification of voters." That decision is decisive of most of the constitutional questions again presented here.

It is suggested that the literacy test in Mississippi is invalid because of the sweep of discretion thereby afforded a registrar in giving a test to an applicant. It will be noted that § 244[2] and the implementing statute[3] do not vest a registrar with any naked, un-

bridled power for arbitrary action on any application. Common sense, honesty, and fair play are the guiding stars of any genuine interpretation such as is contemplated here. In *Yick Wo* v. *Hopkins,* 118 U.S. 356, 6 S. Ct. 1064, in referring to this laundry ordinance of the county which was designed to put the Chinese laundryman out of business, the Court in condemning it said: "The power given to them is not confided to their discretion in the legal sense of that term, but is granted to their mere will. It is purely arbitrary, and acknowledges neither guidance nor restraint." Likewise in *Gomillion* v. *Lightfoot,* 364 U.S. 339; 81 S. Ct. 125, the Court condemned a state statute which was designed and intended to change the boundary of Tuskogee so as to exclude substantially all negroes from the municipality. The Court said: "The complaint amply alleges the claim of race *discrimination.* Against this claim the respondents have never suggested, either in their brief or in oral argument, any countervailing municipal function which Act 140 was designed to serve." There is nothing in any statute before this Court which has any such intent, purpose or effect. Section 702, Mississippi Code 1942, captioned: "Rules-how words to be construed: All words and phrases contained in the statutes are used according to their common and ordinary acceptation and meaning; but technical words and phrases according to their technical meaning." The term good moral character requirement for citizenship is not a vague and meaningless term. It must be understood and construed according to the common acceptation of that phrase. It does not mean to define or require prudery or matchless excellence in moral conduct and behavior. It must be construed in its context as a requirement and qualification for suffrage that the applicant possess the commonly accepted standard of

the average citizen for good moral character. A negro applicant need not measure up to the standard of the highest class citizen in his community, but the statutory standard would not be met by measuring up to the lowest standard of person who might enjoy the privileges of citizenship. The term does not lend itself readily to precise definition or exact standards. No comprehensive definition of good moral character has ever been attempted by any legislative body or judicial tribunal. Likewise, no court has ever comprehensively defined due process, probable cause, or due care, but down through the ages the courts and juries of this country have resolved thousands of controversies depending upon the meaning of those terms without a suggestion that the laws containing such nebulous terms were themselves invalid because of lack of standards and guide lines in such laws for the application of such terms. The standard of fairness and reasonableness of an honest person in properly applying such test has been accepted generally by the judiciary as a full compliance with all of the requirements of due process and fair play.

The vagueness doctrine does not condemn the phrase even if appeared in a criminal statute. Words like "moral turpitude," "good behavior," and other such ambiguous and nebulous phrases have appeared in our statutes for almost a century. The courts have understood them and applied them according to the common understanding and practices with respect thereto. In *Jordan* v. *DeGeorge,* 341 U.S 223; 71 S. Ct. 703, it is said: "We have several times held that difficulty in determining whether certain marginal offenses are within the meaning of the language under attack as vague does not automatically render a statute unconstitutional for indefiniteness. *United States* v. *Wurzbach,* 1930, 280 U.S. 396, 399, 50 S. Ct. 167, 168, 74 L.

Ed. 508. Impossible standards of specificity are not required. *United States* v. *Petrillo*, 1947, 332 U.S. 1, 67 S. Ct. 1538, 91 L. Ed. 1877. The test is whether the language conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. *Connally* v. *General Construction Co.*, 1926, 269 U.S. 385, 46 S. Ct. 126, 70 L. Ed. 322."

In *Brukiewicz* v. *Savoretti*, (5 CA) 211 F. 2d 541. This circuit in affirming the findings of the examiner as to the good moral character of a petitioner for naturalization said: "A wide discretion is vested in the trial judge in determining whether or not 'good moral character' exists. It is to be determined as that term is generally understood, but petitioner's character must measure up to that of the average citizen in the community in which he resides before he is entitled to citizenship by naturalization."

In *Roth* v. *U.S.*, 345 U.S. 476; 77 S. Ct. 1304, the question before the Court was the constitutionality of a criminal obscenity statute said to violate due process because too vague to support conviction for crime. "Many decisions have recognized that these terms of obscenity statutes are not precise. This Court, however, has consistently held that lack of precision is not itself offensive to the requirements of due process. '* * * [T]he Constitution does not require impossible standards'; all that is required is that the language 'conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices * * *.' *United States* v. *Petrillo*, 332 U.S. 1, 7–8, 67 S. Ct. 1538, 1542, 91 L. Ed. 1877. These words, applied according to the proper standard for judging obscenity, already discussed, give adequate warning of the conduct proscribed and mark '* * * boundaries sufficiently distinct for judges

and juries fairly to administer the law * * *. That there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls is not sufficient reason to hold the language too ambiguous to define a criminal offense * * *.' Id., 332 U.S. at page 7, 67 S. Ct. at page 1542. See also *United States* v. *Harriss*, 347 U.S. 612, 624, note 15, 74 S. Ct. 808, 815, 98 L. Ed. 989; *Boyce Motor Lines, Inc.* v. *United States*, 342 U.S. 337, 340, 72 S. Ct. 329, 330, 96 L. Ed. 367; *United States* v. *Ragen*, 314 U.S. 513, 523–524, 62 S. Ct. 374, 378, 86 L. Ed. 383; *United States* v. *Wurzbach*, 280 U.S. 396, 50 S. Ct. 167, 74 L. Ed. 508; *Hygrade Provision Co.* v. *Sherman*, 266 U.S. 497, 45 S. Ct. 141, 69 L. Ed. 402; *Fox* v. *State of Washington*, 236 U.S. 273, 35 S. Ct. 383, 59 L. Ed. 573; *Nash* v. *United States*, 229 U.S. 373, 33 S. Ct. 780, 57 L. Ed. 1232."

In *Marie Posusta* v. *U.S.*, (2 CA) 285 F. 2d 533, an applicant was denied citizenship for want of good moral character and the Court said: "Much has been written as to the scope of that phrase, and, as was inevitable, there has been disagreement as to its meaning. However, it is settled that the test is not the personal moral principles of the individual judge or court before whom the applicant may come; the decision is to be based upon what he or it believes to be the ethical standards current at the time. United States ex rel. *Iorio* v. *Day*, 2 Cir., 34 F. 2d 920, 921; *Repouille* v. *United States*, 2 Cir., 165 F. 2d 152, 153; *United States* v. *Francioso*, 2 Cir., 164 F. 2d 163; *Schmidt* v. *United States*, 2 Cir., 177 F. 2d 450, 451, 452; *Johnson* v. *United States*, 2 Cir., 186 F. 2d 588, 590, 22 A.L.R. 2d 240."

In *Kahm* v. *U.S.*, (5 CA) 300 F. 2d 78, in answer to an attack on a statute for vagueness it was said: "Nothing is more common than for a jury in a case

involving charges of negligence, as for example negligent homicide, to determine whether the proven conduct measures up to the standards of a reasonably prudent man." *United States* v. *Levine* (2 CCA) 83 F. 2d 156, says: "Thus obscenity is a function of many variables, and the verdict of the jury is not the conclusion of the syllogism of which they are to find only the minor premise, but really a small bit of legislation ad hoc, like the standard care."

In *Gundling* v. *Chicago,* 177 U.S. 183; 20 S. Ct. 633, 635, an ordinance of the city of Chicago submitted to the mayor the question of the fitness of a party to have a license to sell cigarettes. This question was submitted for the exercise of discretion of a judicial nature. No standards are contained in the ordinance to guide the mayor in his decision. The Court in upholding that ordinance against Federal attack said: "Regulations respecting the pursuit of a lawful trade or business are of very frequent occurrence in the various cities of the country, and what such regulations shall be and to what particular trade, business or occupation they shall apply, are questions for the state to determine, and their determination comes within the proper exercise of the police power by the state, and unless the regulations are so utterly unreasonable and extravagant in their nature and purpose that the property and personal rights of the citizens are unnecessarily, and in a manner wholly arbitrary, interfered with or destroyed without due process of law, they do not extend beyond the power of the state to pass, and they form no subject for Federal interference. As stated in *Crowley* v. *Christensen,* 137 U.S. 86; 11 S. Ct. 13, 'the possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace,

good order and morals of the community.' Whether there is or is not a delegation of power by the common council to the mayor, is not in this case a Federal question. We have no doubt that the ordinance, so far as the objection above considered is concerned, was clearly within the power of the state to authorize, and must be obeyed accordingly." Again in *Breedlove* v. *Suttles*, 58. S. Ct. 205; 302 U.S. 277, "The privilege of voting is not derived from the United States, but is conferred by the state and, save as restrained by the 15th and 19th Amendments and other provisions of the Federal Constitution, the state may condition suffrage as it deems appropriate."

It has been repeatedly held that a state may properly require a literacy test as a condition precedent to suffrage. It is significant that in paragraph (e) of this same 42 USCA § 1971 in the fourth unnumbered paragraph of that subparagraph, provision is made for a literarcy test wherein the act provides: "Where proof of literacy of an understanding of other subjects is required by valid provisions of state law, the answer of the applicant, if written, shall be included in such report to the Court; if oral, it shall be taken down stenographically and a transcript included in such report to the Court." The United States cannot reconcile its complaint in this case with the announcement of the Supreme Court of the United States in *Minor* v. *Happersett*, 88 U.S. 627; 21 Wall. 162, which held: "The United States has no voters in the states of its own creation. The constitution of the United States does not confer the right of suffrage upon anyone." The sole function of the United States in this voting area is to prevent discriminations under the 14th, 15th and 19th Amendments, but the general prerogative of a state is to condition suffrage as it sees fit. Mississippi

has seen fit and deemed it proper to require a voter (regardless of his color, race or origin) to be possessed of good moral character. That requirement was inserted in the organic law of the state by its insertion in § 241–A of the state constitution. It is complained that the term good moral character is not defined, and that no guide lines are supplied for its application, and that it is, therefore, a mere naked power subject to the capricious will of some irresponsible registrar. An examination of Chapter 573, Mississippi Laws 1962,* will demonstrate to anybody that arbitrary action in the application of such test as to good moral character cannot exist in any administration of such law. A full hearing is provided for. The entire hearing must be recorded by a reporter. Quick and inexpensive appeal procedure is written into this act in addition to the general sections for appeals from the administrative rulings of the registrar. His rulings have no finality or conclusiveness and has no binding effect upon the election commissioners, or upon the circuit court on the second successive appeal.

Chapter 569, Mississippi Laws 1962 * is next assailed as being unconstitutional as being in conflict with 42 USCA § 1974 which requires a registrar to preserve and retain certain records and papers coming into his possession relating to the registration processes for a period of twenty-two months. Section 1974 of that volume makes it a crime punishable by a fine and imprisonment for the destruction, concealment, mutilation or alteration of any such records. The pertinent part of the Mississippi act assailed provides that when no appeal has been taken by an applicant from a ruling of the registrar upon his application or when his application is waived or abandoned by making another application for registration before final judgment or decision is rendered on any prior application, then

"the registrar is not required to retain or preserve any record made under the provisions hereof." Clearly, the state act does not require a destruction of such records but provides that they need not be kept for any state purpose. The Federal act simply intervenes and supersedes and overrides the state enactment to require the preservation of such records even under those circumstances for twenty-two months after an election to enable the Attorney General of the United States to investigate such records within said time after an election to determine and resolve any question therefrom relating to that election. The constitutionality of that state enactment under such circumstances cannot be gainsaid.

Actually, a suit against a registrar is basically a local action. It cannot be treated as in this case as a joint and several action against these six defendant county registrars for their entirely separate and distinct and disconnected activities done in the performance of their duties done solely in their respective counties. That is necessarily so in this case where no registrar in one of the counties has ever done any official act in any other county and could not legally do so. But if any fallacy in law exists in that observation, then every registrar in each of the eighty-four counties in this state would be necessary and indispensable parties to this suit, and for lack of jurisdiction of anyone of whom, this Court could not proceed in their absence under Civil Rule 19.

This is not a diversity suit, and under the general venue statutes in this Court an action which is local in nature can be instituted only in the district of the residence of the defendant. The important considerations here, however, lie in the fact that the complaint nowhere charges that any one of these registrars ever wrongfully did anything to deprive any negro of the

right to register to vote in Mississippi. This is not a case wherein relief is sought against a registrar for discrimination. These registrars are charged with having applied the election laws of this sovereign state with an even hand to all citizens alike. It does not state a right of action of any kind against either one of these registrars. We are, therefore, undeniably faced with a complaint which fails to state a claim upon which any relief can be granted.

It is the clear and positive duty of the Court to consider and act upon motions like these before the Court in this case in limine to forestall any unnecessary delay or expense in protracted litigation. That is the unmistakable teaching of such cases as *Flanders* v. *Coleman*, 250 U.S. 223, 228; 39 S. Ct. 472; *Kvos* v. *Associated Press*, 299 U.S. 269, 278; 57 S. Ct. 197; *Rhode Island* v. *Mass.*, 12 Peters (37 U.S.) 657, 718; *Walmac Co.* v. *Issacs* (1 CA) 220 F. 2d 108, 111; *Battaglia* v. *General Motors Corp.* (2 CA) 169 F. 2d 254, 256 cert. denied 335 U.S. 887. This Court in its exercise of a sound judicial discretion received and considered the motions of the defendants for lack of jurisdiction and for failure to state a claim against the defendants upon which relief could be granted as provided by Civil Rule 12(b), and properly sustained those motions for the reasons indicated when it became perfectly apparent to the Court that there was no possible substance in the complaint.

Civil Rule 8(a) requires a complaint to set forth "a short and plain statement of the claim showing that the pleader is entitled to relief" and "a demand for judgment for the relief to which he deems himself entitled." That rule permits the full application of the Notice Pleading Doctrine to any complaint filed under this rule in a Federal Court. Nevertheless, a pleader must state enough of the ultimate facts and

circumstances relied upon to give the adversary some reasonable notice under the rules of fair play to apprise him of the claim asserted against him. Mere conclusions of the pleader without some ultimate factual basis, and bare statistics without some causal connection assigned thereto other than shallow insinuations or unsupported inferences does not satisfy the Rule 8(a) requirement for a short and plain statement of the claim. The complaint contains thirty-five legal cap pages, arranged in seventy paragraphs, so it is not short and is equally and as certainly not plain. The Court in *Maguire* v. *Todd*, (5 CA) (1952) 198 F. 2d 60, affirmed a dismissal of a Civil Rights suit by the trial court for such infirmity and lack of substance as here. Cf: *Haley* v. *Childers*, (8 CA) 314 F. 2d 610, 613, where it is said: "But a mere conclusion of law or, as here, a naked conclusory allegation that a bargaining contract violates a Federal statute, has no efficacy and is wholly insufficient to confer jurisdiction upon the Federal Court where such allegation is unwarranted by the asserted facts and is contradictory to well pleaded facts." Stripped of such conclusions and deductions of the pleader, the complaint in this case simply seeks a declaratory judgment to have this court declare that two sections of the Mississippi Constitution 1890, and six statutes enacted in 1962 to implement those constitutional provisions as being invalid. United States counsel at the bar readily admitted in questions from the bench that discrimination was not involved in this suit; that the plaintiff relied upon § 1971(c) as its sole authority for this suit, and that there was no authority for this suit unless expressly found in that act. There is an absolute dearth of any notice to be found anywhere in this complaint that any one of the defendants ever

violated § 1971(a), except by enforcing those state laws exactly as written. Attacks on those laws constituting the backbone of the entire election machinery of this state are predicated upon alleged constitutional weaknesses and infirmities in such laws themselves. It is not asserted that the state of Mississippi as a sovereign entity ever did anything to or against any citizen in the execution of such laws. Similarly, it is not asserted that the State Election Commissioners (composed of the Governor, Secretary of State and Attorney General) ever did anything other than prepare the form of application for use of the applicants to register, and it is not asserted that their legislative action was not performed exactly as directed by the Legislature (Chapter 569, Laws 1962).[5] Likewise, it is not asserted that any one of the six county registrars in this suit ever did anything, or threatened to do anything other than administer those laws exactly as written.

A state has the right to declare all of the qualifications for voting within the state. The Federal government has no power, or authority whatever in this field, except to prevent any discrimination among voters and any denial of the right of any citizen to vote on account of his race or color. Any extension of such power or authority of the Federal government would be an usurpation of state authority and an encroachment upon its sovereign domain. "The privilege to vote in a state is within the jurisdiction of the state itself, to be exercised as the state may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals, in violation of the Federal Constitution. The question whether the conditions prescribed by the state might be regarded by others as reasonable or unreasonable is not a Federal one." *Pope* v. *Williams*, 193 U.S. 621; 24 S. Ct.

573. Speaking of the 15th Amendment, the Court in *Guinn & Beal* v. *U.S.*, 238 U.S. 347; 35 S. Ct. 926, 930, the Court said: "Beyond doubt the Amendment does not take away from the state governments in a general sense the power over suffrage which has belonged to those governments from the beginning, and without the possession of which power the whole fabric upon which the division of state and national authority under the Constitution and the organization of both governments rest would be without support, and both the authority of the nation and the state would fall to the ground. In fact, the very command of the Amendment recognizes the possession of the general power by the state, since the Amendment seeks to regulate its exercise as to the particular subject with which it deals."

The United States answered interrogatories propounded by the defendants and took some depositions out of which the gossipy and irrelevant material found in the last half of the dissenting opinion herein was lifted. This material came from the thesis of a political science student at Ole Miss who was writing for his Master's Degree, probably with no thought of playing such an important and prominent role in a court opinion. It is my firm conception of the law that statements subsequently or even precedently made by a member of a constitutional convention as to its purpose and intent could have no possible legal effect upon the validity of the convention product. What some state Supreme Court judge said in a book on the Mississippi Constitution as to the problems before the convention and its solution of the race problem in the state, certainly could not claim relevancy for its production.

The meaning, intent and purpose of an unambiguous act must be obtained from the act itself and not

from the expressions of legislators or their committees. *Marche* v. *United States,* (5 CCA) 126 F. 2d 671. *United States* v. *Ogilvie Hardware Company,* (5 CCA) 155 F. 2d 577. It is never permissible to allow the discussions and views of legislators, friendly or unfriendly to such legislation, to disparage the validity of the ultimate work product of the legislative body. Any such impeachment in such manner of an unambiguous enactment would violate every principal of estoppel. The speeches of a legislator and the discussions of an enactment in committee, or even explanations of a witness before the committee as to the meaning, or intention or purpose of a statute is universally considered a very poor and impoverished source on which to rely to glean the legislative intent. A legislative body is presumed to say what it means, and to mean what it says. It is not within the province of any legislator or member of a constitutional convention to disparage the validity of an enactment of such legislative body by materials of such source. That does not mean to say that a Court should close its eyes and ears to facts and circumstances surrounding an enactment when clarity of expression makes it necessary to resort to extraneous evidence to determine the meaning and intent of an ambiguous statute, or constitutional section. But there is nothing hidden, or concealed or built-in to either of these statutes which would affect its validity. These statutes and constitutional sections here contain nothing invidious, or insidious, as in *Gomillion,* and in *Yick Wo,* so strongly relied on in the dissent. These election statutes are paragons of equity of treatment of all citizens of both races alike.

According to the universal rule of statutory construction, there is the very strongest presumption in

favor of the validity of each of these statutes. It is a strange philosophy which seizes upon every charge of discrimination and every claim of unconstitutionality in a statute as affording an opportunity if not an open invitation to invalidate such statute rather than sustain it. That presumption of validity must attend every statute throughout the trial of any case and be overcome only by the clearest and most convincing evidence to the contrary. In this case we are met with the extremely tenuous claim that these statutes in this case were bred and born in an atmosphere of inequity and invalidity and such evils inhere therein to invalidate them regardless of the fairness and impartiality with which such laws function and are administered. In *Fleming* v. *A. H. Belo Corporation,* (5 CCA) 121 F. 2d 207, in speaking of Congressional debates as reflecting upon the intent of Congress in an enactment, it is said: "It is just because of this fact, that legislation is compromise, that the view of the proponents and of the opponents, as to the purposes and effect of the legislative act, are never regarded as of value in a construction of it, and that it is settled law that statutes must be construed in accordance with the intent of the legislature as expressed in the langauge of the act as a whole. Its meaning may not be sought by the courts in the vague penumbrae of the wishes and desires of its proponents or its opponents as these are expressed in debates."

In *U.S.* v. *Trans-Missouri Freight Ass'n.,* 166 U.S. 290, 17 S. Ct. 540, 550, the Court said: "There is, too, a general acquiescense in the doctrine that debates in Congress are not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body. *U.S.* v. *Union Pac. R. Co.,* 91 U.S. 72, at page 79; *Aldridge* v. *Williams,* 3 How. 9–24, Taney, C.J.; *Mitchell* v. *Manufacturing*

Co., 2 Story, 648, at page 653, Fed. Cas. No. 9,662; *Reg.* v. *Hertford College,* 3 Q.B. Div. 693, at page 707. The reason is that it is impossible to determine with certainty what construction was put upon an act by the members of the legislative body that passed it by resorting to the speeches of individual members thereof. Those who did not speak may not have agreed with those who did, and those who spoke might differ from each other; the result being that the only proper way to construe a legislative act is from the language used in the act, and, upon occasion, by a resort to the history of the times when it was passed."

Section 244, Mississippi Constitution 1890 was before the United States Supreme Court in 1898 in *Williams* v. *State of Mississippi*, 170 U.S. 213; 18 S. Ct. 583, where it was complained that this 1890 convention by this § 244 discriminated against the characteristics and the offenses to which negro members are prone; and that the section contained no standards for use by the registrar in applying his test to a citizen desiring to register to vote and that such discretion was thus unlimited and unreasonable and invalid. Yet, the Federal Supreme Court said that the Mississippi Constitution and laws passed pursuant thereto prescribing the qualifications of the voter and investing administrative officers with a large but sound discretion in determining what citizens have the necessary qualifications, cannot be held repugnant to the 14th Amendment merely on a showing that they operate as a discrimination against the colored race As the complaint states [paragraph 50(b)] that § 241–A, providing the good moral character requirement provided "an additional device with which registrars *could* discriminate against negro citizens who seek to register to vote." Such an

averment is merely a suggestion of a possibility and nothing more which was discarded by the Court as ineffectual in *Williams* v. *State of Mississippi,* supra, to assail the validity of an act. Unless all of these eight state laws are facially invalid, the entire suit must fail. Environment of a legislative body, even an evil intent of its membership and an unlawful purpose cannot serve to invalidate its legislation because thereof. It is not contended or even suggested that all unregistered white people who apply for registration do not have to comply with all of the requirements of this entire package of laws and satisfy and demonstrate to the registrar that they possess all of the qualifications and none of the disqualifications to register to vote. The fact that such laws may discommode or inconvenience a negro citizen or even work a hardship upon him to comply with such requirements to entitle him to register to vote, does not present any constitutional infirmity in such laws. The sovereign state of Mississippi has the right to declare the qualifications of its citizens to register to vote, and every one of the qualifications in this state therefor have been repeatedly approved as valid. Substantially all requirements of the state of Mississippi for registration to vote have been uniformly approved without exception. *United States* v. *Atkins* (5 CA) 323 F. 2d 733; *Trudeau* v. *Barnes,* (5 CCA) 65 F. 2d 563; cert. denied 290 U.S. 659; *Lassiter* v. *Northhampton County Board of Elections,* 360 U.S. 45; 79 S. Ct. 985.

This is not a school case. It is not a public accommodations case. These collateral questions may not be desperately drawn in to this case to confuse the sharp and clear issues as to the validity vel non of these Mississippi election laws. Statistics are resorted to frequently by those advocates who find

themselves without substantial factual support in the genuine issues at hand. Here, much is made in the complaint and in the dissent about only 5% of the adult Negro citizens being registered while 67% of the adult white citizens are registered. This Court judicially knows that negroes never manifested any substantial interest in registering or voting in Mississippi prior to a direct appeal to them from President Kennedy to do so. The weakness of such statistics is more apparent when it is realized that the complaint in this case does not undertake to link the registrars with any responsibility therefor and actually assigns no causal reason therefor; doubtless because it could not be truthfully said and certified that very many qualified negro citizens (possessing all of the qualifications and none of the disqualifications) had applied to some registrar to register and had been rejected. Surely, a qualified colored citizen who did not care to register and had never bothered about voting, could not expect to find his name on a registration roll unless he had exerted himself to do the necessary to put it there.

Since the registrars are thus parties to this suit instituted for the sole purpose of having these eight laws in a package declared unconstitutional, and since this case, therefore, does not involve an instance where anyone of these registrars has done anything to wrongfully deny any negro the right to register to vote in his county, it must follow that this Court has no jurisdiction of the sovereign state, and that the complaint fails to state a claim against the other defendants upon which relief can be granted. If this suit were not an attack on the validity of these election laws, but only an attack on the enforcement thereof by these registrars, it would not be a three judge case as it is. It is said in *Sealy* v. *Depart-*

ment of Public Instruction of Penn., et al., (3 CA) 252 F. 2d 898; cert. denied 78 S. Ct. 1139, *"Mere attack on regulations or method of enforcement of a statute is not sufficient to justify the interposition of a three-judge court.* Ex parte Bransford, 1939, 310 U.S. 354, 60 S. Ct. 947, 84 L. Ed. 1249, *William Jameson & Co. v. Morgenthau,* 1938, 307 U.S. 171, 59 S. Ct. 804, 83 L. Ed. 1189."

The election machinery in this state contains every constitutional safeguard against any possible invalidity, including that of due process. Under § 3217–03, Mississippi Code 1942, the registrar "who is an administrative officer of the county in which he serves as registrar" is vested with the full power and authority to conduct administrative hearings and render his decision upon any application to register at the time or he may take the matter under advisement as a court may do. Under § 3217–04, Mississippi Code 1942, provision is made for hearings in the county on such applications to register. He may issue subpeonas for witnesses under § 3217–05. Section 3217–07, Mississippi Code 1942, requires the registrar to have all testimony taken before him to be taken down by a competent reporter and a transcript thereof filed with and retained by him in his office. Section 3217–09, Mississippi Code 1942, provides that an applicant may appear in person or by counsel at such a hearing and may examine or cross-examine witnesses as in the circuit court. Section 3217–10, Mississippi Code 1942, provides for an appeal from any decision of the registrar to the Board of County Elections Commissioners. A general section of the Code provides for a further appeal to the circuit court and even to the Supreme Court of the state. Chapter 573, Mississippi Laws 1962 provides for an appeal to the circuit judge in term time or

in vacation on the good moral character requirement of the act. Liberal provision for hearings and quick decisions on appeals differentiate this entire election system from others which have been condemned because a registrar's acts were unlimited as to discretion and contained naked powers for arbitrary and capricious actions which were final and conclusive.

These Mississippi election laws at bar fairly demonstrate upon their face the recognition and application of all of the rules of fair play and impartial treatment of all citizens of both races alike. The majority opinion and ensuing judgment in this case in its entirety is irrefragably correct and I concur therein.

WILLIAM HAROLD COX,
United States District Judge.

BROWN, Circuit Judge, Dissenting:

In the opening bars, the Court [1] sounds the theme of a clash between the indestructible union and the indestructible state. The tone of indestructibility is good. For history tells us that no political institution is indestructible. If it is to survive, it must save itself from destruction. It is the peril of destruction which is what this case is all about. For no state, and no nation, can survive if, professing democratic rule of the governed, it flagrantly denies the voting right through racial or class discrimination.

[1] As discussion of court decisions, opinions, etc., inevitably calls for use of terms such as "the Court," or "this Court," I refer hereafter to the Court's decision and opinion in the instant case as the majority. Likewise, by the abbreviation "Fifth Circuit," I refer to the United States Court of Appeals for the Fifth Circuit of which Judge Cameron and I are members.

The resulting facts are not in dispute. Mississippi must candidly admit that no more than 5% of its adult Negro citizens are registered to vote. This means that public rule comes from the 67% of white adults who are. The contest is whether this is the result of discriminatory state "Constitution, laws, customs, or usages" in violation of the Civil Rights Act, 42 USCA § 1971(a).

That contest is a big one. It is no little controversy between one or more individual Negro voters and individual Registrars. It is between all Negro adults and the State. Indeed, it is between all citizens of the United States and the State. In that setting, it is fitting that the protagonists appear to be what they really are—the United States and the State of Mississippi. The decisive question is, therefore, whether the United States may maintain this suit and whether it may be maintained against the State of Mississippi. Once that is decided, nearly everything falls into place, or becomes a matter of superficial consequence.[2] Once that is established, even the sketchy analysis enforced by time[3] will demonstrate two things. First, in dismissing the complaints for fail-

[2] See, for example, dismissal of the State Board of Election Commissioners (the Governor, Secretary of State, Attorney General) majority opinion Part VI; misjoinder of causes of party defendants, Part VII; lack of jurisdiction over person of three registrar defendants, Part VIII; improper venue as to one registrar defendant, Part VIII; or necessity for separate trials as to each registrar to obtain a pattern or practice, finding and remedy, Part VIII.

[3] In publishing its opinion without awaiting time for preparation of this dissent, the majority presumably thought it desirable that this case reach the Supreme Court along with, or at least not too long after, the appeal in *United States* v. *State of Louisiana*, D.C. La., 1963, (3-Judge) 225 F. Supp. 353–403. I would agree with this objective.

ure to state a claim, F.R. Civ. P. 12(b), the majority ignores settled principles of federal procedure. Second, on application of correct principles, the Government's complaint and the supplemental showing by answers to interrogatories is more than adequate to demonstrate that the Government might prevail in whole or substantial part.

Such consideration of the constitutional attacks will also expose the majority's fundamental misconception of the nature of the Government's suit. It is not, as the majority repeatedly emphasizes, one attacking the statutes on their *face*. Nor is it one seeking relief because statutes valid on their face, and valid in fact, are being discriminatorily applied.

Discrimination is, to be sure, an important element of the Government's thesis. But the discrimination sought to be proved, both in practice and in result, has a far greater function. For the Government's theory—which it seeks an opportunity to establish factually—is simply this: The underlying Mississippi constitutional provisions and the implementing statutory law regulating registration of voters came into being—and are currently maintained—out of a purpose by the organized State to deny Negroes the right to vote by contriving a structure having the appearance of legality, but having known, built-in devices which would, and did, effectually deny or overwhelmingly discourage the Negroes' effort toward full citizenship. The immediate means—the understanding test—must be judged, both in its purpose and in its effect, by the segregated policy of education and the wide disparity in the quality and quantity of education afforded by Mississippi to its white and Negro children. Likewise, these registration enactments must be considered against the background of official

State action denying an effective use of voting rights by Negroes fortunate enough to be registered. One interesting facet of this Grand Design is the speed and apparent effectiveness of the State's reflex to Federal Court decisions or congressional enactments which tend, or seem, to restore some small portion of the Negro citizens' rights.

I.

The United States May Sue

As I read Part IX, the majority declares that this character of broad attack may not be brought by the United States because it has not been "expressly authorized to sue by act of Congress." 28 USCA § 1345. To avoid some supposed constitutional restrictions on the right of the national sovereign to authorize itself to sue in its own Courts to protect the rights of its citizens, the majority reads 42 USCA § 1971 (c) and (d) narrowly. This leads to the conclusion that although Congress has authorized suits by the Government to protect identifiable individuals from actual or threatened discrimination by identifiable State officials in the administration of valid laws, the Government may not, under this statute, maintain a suit attacking the constitutionality of statutes or State constitutional provisions which bring about like discrimination, only wholesale. An odd reverse of the discarded notion that "The King Can Do No Wrong," it is a declaration that an indestructible nation can right only little wrongs, not big ones.

There are a number of answers which may be briefly put. First, I can conceive of no constitutional hazard. The Fourteenth and Fifteenth Amendments are ample resources if specific legisla-

tion is required. I would have considerable doubt that specific legislation is needed. Jurisdiction, as such, while always a threshold question, is here of no moment. Whatever might be the affirmative grant of jurisdiction, it is clear that Congress has not prohibited such suits.[4] The proviso of 28 USCA § 1345 is thus irrelevant, and the balance of the section imposes no requirement that a suit "commenced by the United States" be expressly authorized by an Act of Congress. This latter requirement is confined to suits commenced "by any agency or officer" of the United States.[4] Whether in a given situation the United States has standing to sue on behalf of citizens may present a problem. But it does not go to the jurisdiction of the Court as is here supposed. And as to standing to sue in vindication of fundamental, vital rights of citizenship of a kind which Congress recognizes may be vindicated at the behest of a private person,[5] I join with Judge Wisdom in *United States* v. *City of Jackson, Mississippi*, 5 Cir., 1963, 318 F. 2d 1, 14–16; 320 F. 2d 870. I would hold that, apart from the Fourteenth Amendment, the Commerce Clause there, and the Fifteenth Amendment here, invest the national sovereign with the power to institute in its own Court appropriate judicial action "to promote the interest of all" by eradicating engrained official patterns of conduct which "collides with national policy as embodied in the Constitution." *In re Debs*, 1895, 158 U.S. 564,

[4] 28 USCA § 1345. "Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by an agency or officer thereof expressly authorized to sue by Act of Congress."

[5] 42 USCA § 1983; cf. *Monroe* v. *Pape*, 1961, 365 U.S. 167, 81 S. Ct. 473, 5 L. Ed. 2d 492.

15 S. Ct. 900, 39 L. Ed. 1092;[6] *United States* v. *San Jacinto Tin Co.*, 1888, 125 U.S. 273 at 279, 8 S. Ct. 850, 31 L. Ed. 747; *United States* v. *American Bell Telephone Co.*, 1888, 128 U.S. 315, 367, 9 S. Ct. 90, 32 L. Ed. 450; *Sanitary District of Chicago* v. *United States*, 1925, 266 U.S. 405, 425–26, 45 S. Ct. 176, 69 L. Ed. 352.

But none of these problems exist here. Congress has laid down the substantive standard in § 1971(a), has prescribed the machinery to effectuate such rights in § 1971(c), and has invested the District Courts with jurisdiction by § 1971(d). Under this structure whenever "any person," which includes the State, is engaging "in any act or practice which would deprive any other person of any right * * * secured by subsection (a) * * * the Attorney General may institute * * * in the name of the United States, a civil action or other proper proceeding for preventative relief * * *." Here, of course, it is categorically alleged

[6] As the Court pointed out, "*Debs* has been relied on as a basis for standing in three recent cases in this Circuit: *United States* v. *Lassiter*, W.D. La., 1962, 203 F. Supp. 20, aff'd 371 U.S. 10, 83 S. Ct. 21, 9 L. Ed. 2d 47; *United States* v. *Klans*, M.D. Ala., 1961, 194 F. Supp. 897; and *United States* v. *City of Montgomery*, M.D. Ala., 1962, 201 F. Supp. 590." 318 F. 2d 14.

[7] 42 USCA § 1971(c). The portion here under discussion was Civil Rights Act of 1960, § 601(b), 74 Stat. 90, and the section now reads: "(c) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventative relief, including an application for a permanent or temporary injunction, restraining order, or other order. In any proceeding hereunder the United States shall be liable for costs the same as a private person. Whenever, in a proceeding instituted under

that the State of Mississippi and the other named defendants are depriving adult Negro citizens of Mississippi "who are otherwise qualified by law to vote" of their right to "be entitled and allowed to vote * * * without distinction of race, color, * * *." Of course, the phrase "who are otherwise qualified by law to vote" is important. Injunctive relief or the benefits of the referee machinery, § 1971(e), extend only to those "otherwise qualified." But to read it as narrowly as does the majority would make the statute ineffectual and virtually useless. "Otherwise qualified" simply means that had there been either (a) no invalid statutory provision or (b) no discrimination in the application of a valid statute, the applicant would have fulfilled substantively all of the applicable legal requirements for voting.

Without a doubt the Government can be the adversary to champion the rights of its citizens who are the victims of state discrimination, *United States* v. *Raines*, 1960, 362 U.S. 17, 27, 80 S. Ct. 519, 4 L. Ed. 2d 524, 533,[8] and it may be done when the discrimina-

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this subsection any official of a State or subdivision thereof is alleged to have committed any act or practice constituting a deprivation of any right or privilege secured by subsection (a) of this section, the act or practice shall also be deemed that of the State and the State may be joined as a party defendant and, if, prior to the institution of such proceeding, such official has resigned or has been relieved of his office and no successor has assumed such office, the proceeding may be instituted against the State."

[8] "It is urged that it is beyond the power of Congress to authorize the United States to bring this action in support of private constitutional rights. But there is the highest public interest in the due observance of all the constitutional guarantees, including those that bear the most directly on private rights, and we think it perfectly competent for Congress to authorize the United States to be the guardian of that public interest in a suit for injunctive relief." 362 U.S. 17, at 27.

tion comes from rank partiality in administrative practices. *United States* v. *Lynd*, 5 Cir., 1962, 301 F. 2d 818; 1963, 321 F. 2d 26, cert. denied, 1964, —— U.S. ——, —— S. Ct. ——, 11 L. Ed. 2d 416 [No. 576, January 6, 1964]. But in the broad language authorizing the Government to institute "a civil action or other proper proceeding for preventive relief, including * * * a permanent or temporary injunction, * * * or other order," there is no indication that Congress meant to impose any artificial restrictions because of the source of the discriminatory deprivation of voting rights. Discriminatory denial of voting rights, on a retail or wholesale basis, whether from discriminatory practice or invalid statutes, was to be attacked.

What is at stake is the right of disfranchised Negroes to parity of treatment so that the bare 5% of Negro registrants may approach equality with the 500,000 white registrants (67%). If—and to resolve the if a trial is sought—the disparity is due to discrimination,[9] there is nothing in the statute to compel the Government to pursue the tortuous snail's pace on behalf of individual voters in individual counties.

II.

The State of Mississippi May Be Sued

The majority's conclusion that Mississippi may not be sued is a curious one. Beset by similar constitu-

[9] A finding of discrimination was the end result in *United States* v. *Lynd*, 5 Cir., 1963, 321 F. 2d 26, cert. denied, 1964, —— U.S. ——, —— S. Ct. ——, 11 L. Ed. 2d 416, earlier opinion 301 F. 2d 818; and the District Court found, and the Fifth Circuit affirmed, the finding of flagrant, rank discrimination in *United States* v. *Ramsey*, 5 Cir., 1964, —— F. 2d —— [No. 20596, February 20, 1964].

tional apprehensions, the majority—as it did in dealing with the right of the United States to sue—reads § 1971(c) narrowly to avert a declaration of unconstitutionality. But having done this, it comes out at the same place by holding that, the State being a perfect idealism, Congress may not constitutionally impute to it as its own act and deed the actions of its official representatives. Thus is § 1971(c) [10] drummed out of the Act for all but that rare instance in which there are no personal officers to sue.

The statute is plain and for this case it is plainly constitutional. Two things are accomplished by § 1971(c). First, as a substantive matter, it declares that "any act or practice constituting a deprivation" of subsection (a) rights committed by "any official of a state or subdivision thereof" shall "be deemed that of the state." Second, it provides a procedural remedy to enforce that substantive right. It does this by prescribing two things: (a) the "state may be *joined* as a defendant"; and (b) if there is no person holding the office capable of being sued as a defendant to which the state may be *joined,* then "the proceeding may be *instituted* against the state." [Emphasis supplied.] Thus there is no room, or need for, statutory construction to determine when a state may be *joined* with other defendants. And assuming, as in *Atkins and Ramsey,*[11] the District Court may sometimes refuse relief against the state at the end of the trial, this is no reason for throwing out the state before the trial even begins.

A state has no general immunity from suit by the national sovereign. *United States* v. *Texas,* 1892, 143

[10] 42 USCA § 1971(c) is set out in full at note 7, supra.

[11] *United States* v. *Atkins,* 5 Cir., 1963, 323 F. 2d 733, 739; *United States* v. *Ramsey,* 5 Cir., 1964, —— F. 2d —— [No. 20596, February 20, 1964].

U.S. 621, 642–646, 12 S. Ct. 488, 36 L. Ed. 285.[11] And Congress can prescribe the forum in which the suit is to be commenced as it has done in § 1971 (c) and (d). *Case* v. *Boles*, 1946, 327 U.S. 92, 97, 66 S. Ct. 438, 90 L. Ed. 552; *United States* v. *California*, 1936, 297 U.S. 175, 187, 56 S. Ct. 421, 80 L. Ed. 567; 28 USCA § 1251(b)(2).

The fact that in the brief per curiam so heavily stressed by the majority, the Supreme Court in *United States* v. *Alabama*, 1960, 362 U.S. 602, 80 S. Ct. 924, 4 L. Ed. 2d 982,[13] did not affirmatively hold § 601 constitutional is a far cry from either a holding of unconstitutionality or an expressed apprehension on constitutionality. What, and all, it did was to foreclose the inference that, in remanding the case to permit trial against the State, the Court silently passed on the issue. But in both *Dogan* and *Lynd*[14] the Fifth Circuit, emphasizing the wide nature of the relief afforded by § 1971 against voter discrimination, recognized that the remedy may run against the state

[11] See also: *New York* v. *United States*, 1946, 326 U.S. 572, 66 S. Ct. 310, 90 L. Ed. 326; *United States* v. *Arizona*, 1935, 295 U.S. 174, 55 S. Ct. 666, 79 L. Ed. 1371; *United States* v. *Michigan*, 1903, 190 U.S. 379, 23 S. Ct. 742, 47 L. Ed. 1103.

[13] Of this disclaimer, the Fifth Circuit in *Atkins*, supra, stated: "We follow the same course in the present case." 323 F. 2d 733, 739, n. 7.

But the Court earlier had stated: "It should be recalled that the State of Alabama is a party to this action and is responsible for the discriminatory acts and practices of the registrars. This is expressly provided for in 42 USCA § 1971(c) as amended by the Civil Rights Act of 1960, § 601(b)." 323 F. 2d 733, 739.

[14] *United States* v. *Dogan*, 5 Cir., 1963, 314 F. 2d 767; *Kennedy* v. *Lynd*, 5 Cir., 1962, 306 F. 2d 222, at 228, cert. denied, 371 U.S. 952, 83 S. Ct. 507, 9 L. Ed. 2d 500.

as such.[15] And the second *Alabama* v. *United States*, 5 Cir., 1962, 304 F. 2d 583, aff'd, 1962, 371 U.S. 37, 83 S. Ct. 145, 9 L. Ed. 2d 112, is highly significant. After a trial on the merits following the remand by the Supreme Court pursuant to § 601, the District Court found discriminatory practices on the part of the voting registrars. Even though there were successor registrars as parties to the suit,[16] the District Court rendered a decree against the State of Alabama. Additionally, on the basis of findings of discrimination, it declared that 54 specifically named applicants were to be registered. The Supreme Court affirmed this holding that the State was subject to orders against it and the form of relief granted was appropriate.[17] Similarly, a direct injunction against the State of Mississippi was issued by the Fifth Circuit

[15] In a series of proceedings instituted by the Attorney General under § 1974 (b) and (d) to obtain voter records, constitutionality has repeatedly been upheld against specific attack. *In re Dinkens* v. *Attorney General*, 5 Cir., 1961, 285 F. 2d 430, approving and adopting, *Alabama ex rel. Gallion* v. *Rogers*, M.D. Ala., 1960, 187 F. Supp. 848; *Kennedy* v. *Bruce*, 5 Cir., 1962, 298 F. 2d 860; *United States* v. *Lynd*, 5 Cir., 1962, 301 F. 2d 818; *Coleman V. Kennedy*, 5 Cir., 1963, 313 F. 2d 867, cert. denied, 373 U.S. 950, 83 S. Ct. 1681, 10 L. Ed. 2d 705; *Kennedy* v. *Owen*, 5 Cir., 1963, 321 F. 2d 116; *Kennedy* v. *Lewis*, 5 Cir., 1963, 325 F. 2d 210.

[16] Although the successor administrators were still parties, they were absolutely indifferent or noncommittal. 304 F. 2d 583, at 588.

[17] The District Court set up an elaborate policing machinery consisting of monthly reports to both the Court and the United States Attorney which were subject to verification by checks on the voting records by agents of the United States. 304 F. 2d 583, at 584. Similar relief was prescribed by the Fifth Circuit in *United States* v. *Ramsey*, 5 Cir., 1964, —— F. 2d —— [No. 20596, February 20, 1964].

pending appeal in *United States* v. *Lynd*, 5 Cir., 1962, 301 F. 2d 818, and affirmed after argument on the merits, 5 Cir., 1963, 321 F. 2d 26.[18]

The majority's conclusion of unconstitutionality rests on what may best be described as the Eleventh Amendment dialectic. Underlying this approach is the literal extension of the philosophic discussions of political economy of the kind found in *Ex parte Young*, 1908, 209 U.S. 123, 28 S. Ct. 441, 52 L. Ed. 714.[19] (See Part V.) In this approach the State is regarded as an idealism, existing separate and apart from the human beings who carry out its functions, and wholly incapable of anything wrong or unlawful. Logically, when the State through the power of its instrumentality achieves an illegal, unlawful end, it has not been the State at all, merely individuals acting in excess of the maximum authority which might have been granted. This result then pushes the proponents into another fiction. Logically, of course, there would be no constitutional federal judicial re-

[18] The Court by separate unpublished order and findings in the proceeding for contempt held the Registrar Lynd in civil contempt for violations of the injunction pending appeal. Certiorari was denied, *Lynd* v. *United States*, 1964, ——. U.S. ——, —— S. Ct. ——, 11 L. Ed. 2d 416 (see *Lynd* v. *United States*, 32 U.S.L. Week 3214, No. 576). The civil contempt order also required that the registrar (a) immediately register approximately 40 named Negro applicants; (b) use specified sections of the Mississippi Constitution for the "understanding" test; (c) cease rejecting applications for errors if the person met the standards specified in the order; and (d) inform the applicant of the exact errors and deficiencies in the application.

[19] See also: *Ex parte Virginia*, 1880, 100 U.S. 339, 25 L. Ed. 676; *Cooper* v. *Aaron*, 1958, 358 U.S. 1, 78 S. Ct. 1401, 3 L. Ed. 2d 5; *United States* v. *Raines*, 1960, 362 U.S. 17, 80 S. Ct. 519, 4 L. Ed. 2d 524; *Poindexter* v. *Greenhow*, 1885, 114 U.S. 270, 5 S. Ct. 903, 29 L. Ed. 185.

dress against such "illegal" excesses since this would not be "State action" as the concept is used in the Fourteenth Amendment or in the implementing Civil Rights Acts. E.g., 42 USCA §§ 1983, 1971(a). Consequently, Mississippi concedes and the majority holds that these actions, if unauthorized, constitute State action. But admitting that this is State action to allow redress against the transgressing individuals, thereby overcoming the bar of the Eleventh Amendment under the *Ex parte Young* doctrine, the majority insists that it is not State action so as to be imputed to the State where Congress, unfettered by the Eleventh Amendment, expressly provides for suit by the national sovereign against the State.

Were this the inevitable consequence of fictions—useful as they are for solutions of some of the law's formal incongruities, cf. Douglas, J., dissenting in *Parker* v. *Ellis*, 1960, 362 U.S. 574, 595, 80 S. Ct. 909, 4 L. Ed. 2d 963—a good deal of judicial history would have to be erased. Worse, it would close the courthouse to the resolution of conflicts between the national and state governments whether they concern ownership of offshore tidelands, *United States* v. *Texas*, 1950, 339 U.S. 707, 70 S. Ct. 918, 94 L. Ed. 1221, or interference with the orders of a Federal Court.[20]

This is not the case in which ordinary actions of Government officials perhaps in excess of authority

[20] See *Mississippi* v. *Meredith*, 1963, 372 U.S. 916, 83 S. Ct. 722, 9 L. Ed. 2d 723, granting motion of the United States for leave to be named party respondent and denying certiorari from judgments holding the Governor and Lt. Governor of the State of Mississippi in civil contempt in proceedings instituted by the United States as amicus curiae-intervenor, *Meredith* v. *Fair*, *United States* v. *Mississippi*, 5 Cir., 1962, 313 F. 2d 532; *Meredith* v. *Fair*, *United States* v. *Mississippi*, 5 Cir., 1962, 313 F. 2d 534.

are sought to be imputed to the State to make the State directly responsible therefor. Here the actions taken by individuals relate to a function which is governmental in nature and wholly unrelated to private, personal activity. For here every action relates to the elective process. Under no circumstances could any official, high or low, involved in the registration-elective process be regarded as a private person. Each "* * * takes its character as a state agency from the duties imposed upon it by state statutes; the duties do not become matters of private law because they are performed by * * *" a private person, *Smith* v. *Allwright*, 1944, 321 U.S. 649, 658, 663, 64 S. Ct. 757, 88 L. Ed. 987; *Terry* v. *Adams*, 1952, 345 U.S. 461, 73 S. Ct. 809, 97 L. Ed. 1152; *Baldwin* v. *Morgan*, 5 Cir., 1958, 251 F. 2d 780, 790; 1961, 287 F. 2d 750, at 754–55, n. 9; *Bowman* v. *Birmingham Transit Co.*, 5 Cir., 1960, 280 F. 2d 531, 535. By their structure and express provision, the Mississippi voter statutes reflect that the action of all is that of the State and the State alone.[21]

These principles are more than ordinarily applicable if the basic theory of the Government's suit is kept carefully in mind. Unlike those charging that Negro voters are deprived of constitutional rights because of discrimination in the administration of otherwise valid statutes, the thesis is here that these voter registration laws (and Constitution) are themselves invalid because, in their setting, they established a structure which was intended to, and in fact did permit effectual denial to

[21] See, e.g., Miss. Code § 3219.5: "The county registrar, while acting within his jurisdiction and under the authority of this act, shall not be liable personally for any error of judgment." And see also Miss. Code of 1942, § 3230: "* * *. Costs shall not, in any case, be adjudged against the commissioners or the registrar."

the Negro of the right to vote, the final proof of which, being in the pudding's eating, is the disparate results of 67% *vs.* 5%. On such a theory, it is conceptually impossible for statutes (and constitutional provisions) to be anything other than State actions, as the State, by the State, and for the State. Everything under attack here—the understanding test, promulgation of the registration application form, the duty to fill it out without assistance, prohibition against advice concerning errors, the good moral character test, the right of citizen challenge—are all strictly prescribed in the Mississippi Constitution and statutes. Acts done thereunder are truly acts of the State, not merely State actions by individual persons.

Substantively, there can at this late date be no question of the constitutional power to charge the State directly for denial of voter rights accomplished by the statutory structure or its administration. Under § 1971(a) the right is guaranteed to vote without distinction of race "* * * any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding." Discriminatory State Constitutions and laws which were found to be unconstitutional in themselves have been voided by the Supreme Court pursuant to this subsection.[22] *Guinn* v. *United States*, 1915, 238 U.S. 347, 355–56, 35 S. Ct. 926, 59 L. Ed. 1340; *Myers* v. *Anderson*, 1915, 238 U.S. 368, 35 S. Ct. 932, 59 L. Ed. 1349.

[22] 42 USCA § 1971(a) was designated Rev. Stat. § 2004 when *Guinn* and *Myers* were decided. It is clear from the legislative history that 42 USCA § 1971(c) imposes no substantive limits on the scope of the rights protected by § 1971(a). Section 1971(c) provides an enforcement procedure to implement § 1971(a) similar to that available by virtue of Rev. Stat. § 1979 (now 42 USCA § 1983) to enforce Rev. Stat. § 2004. H.R. Rep. No. 291, 85th Cong., 1st Sess., 12 (1957).

The rich experience in voter discrimination affords an ample basis for the conclusion that there is a reasonable connection between the congressional determination that in voting suits, the acts of local representatives of government may be deemed to be the acts of the State on the one hand, and the rights to be secured under the Fourteenth and Fifteenth Amendments on the other. The scope of congressional power under the Fourteenth and Fifteenth Amendments is surely broad enough for the adoption of any remedial legislation "necessary and proper for counteracting such laws as the states may adopt or enforce, and which, by the Amendment, they are prohibited from making or enforcing, or such acts and proceeding as the states may commit or take, and which by the amendment, they are prohibited from comitting or taking." *Civil Rights Cases,* 1883, 109 U.S. 3, 14, 3 S. Ct. 18, 27 L. Ed. 835.

III.

Majority Applies Incorrect Standards for Dismissal

While professing to follow the standards epitomized in *Conley* v. *Gibson,* 1957, 355 U.S. 41, 78 S. Ct. 99, 2 L. Ed. 2d 80,[23] the majority commits a basic procedural error. It subjects the Government's complaint to tests no longer appropriate under the Federal Rules of Civil Procedure.

The majority is preoccupied with two things, each contrasting the other. Its approach emphasizes that the allegations must be of *facts,* as distinguished from *legal conclusions.* This becomes vital to its thesis since technically it is said the motion to dismiss admits only

[23] See Majority Opinion, note 1 and accompanying text.

facts well pleaded." But F.R. Civ. P. 8(a)(2) does not require that facts be pleaded, only that the complaint "shall contain * * * (2) a short and plain statement of the claim showing that the pleader is entitled to relief * * *." Professor Wright points out that a

> "Claim for relief stated in general terms and legal conclusions may be sufficient to inform the adversary and to withstand a motion to dismiss; * * * the sufficiency of a claim so stated is not tested by the strict standards once applied to determine whether a 'cause of action' was sufficiently stated." 1A Barron & Holtzoff, Federal Practice and Procedure § 356, at 360 (Wright ed. 1960).

But I do not press this as a technical principle because the complaint charges discriminatory purpose and effect in the most positive, direct and simple terms. For example, after reciting factual, statistical and historical details in the first 15 paragraphs, it charges that "one of the chief purposes" of the newly adopted Constitution of 1890, "* * * was to restrict the Negro franchise and to establish and perpetuate white political supremacy and racial segregation in Mississippi." This was accomplished, the complaint charges, through the understanding clause. The complaint goes on to allege that later, under the stimulus

[24] In the instant case the Court unanimously overruled all motions of all defendants which sought to compel the Government to plead allegations of discriminations with factual specificity under F.R. Civ. P. 9(b) on the asserted theory that these were equivalent to charges of fraud. This ruling was clearly correct. *United States* v. *Lynd*, 5 Cir., 1963, 321 F. 2d 26, 27, cert. denied, 1964, —— U.S. ——, —— S. Ct. ——, 11 L. Ed. 2d 416; *United States* v. *Lynd*, 5 Cir., 1962, 301 F. 2d 818, 822, cert. denied, 371 U.S. 893, 83 S. Ct. 187, 9 L. Ed. 2d 125.

of a decision of the Fifth Circuit[25] which construed Article 244, the "read *or* understand" provision, disjunctively and the 1954 school decision, an amendment was adopted requiring ability to read *and* understand. The effect of this was to subject the vast body of unregistered adult Negroes (numbering over 475,000) to new and stringent requirements to which the mass of white voters (numbering 500,000) had not been subjected. This amendment, it is alleged, was "designed to perpetuate in Mississippi white political supremacy, a racially segregated society, and the disenfranchisement of Negroes."

Similarly, in the "fourth claim" the complaint recites in detail the 1960–1962 efforts of the Government through the Federal Court proceedings to obtain voter registration records in Mississippi, and in other proceedings to enjoin discriminatory practices, chiefly in Forrest County.[26] After factually alleging developments in the court proceedings, the complaint goes on to state that to overcome specific provisions of the Fifth Circuit's injunctive order—especially those requiring assistance to Negro applicants on an equality

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[25] *Peay* v. *Cox*, 5 Cir., 1951, 190 F. 2d 122. This case is heavily stressed by the majority. See Parts V, and n. 17, XIII, n. 59. The aspect of the case requiring a voter to exhaust administrative remedies has been legislatively overruled. 42 USCA § 1971(d).

[26] This battle was on many fronts. In *Kennedy* v. *Lynd*, 5 Cir., 1962, 306 F. 2d 222, cert. denied, 371 U.S. 952, 83 S. Ct. 507, 9 L. Ed. 2d 500, the Government sought, and after reversal in the Fifth Circuit, obtained the right to voter records under § 1974(b). A few months earlier in *United States* v. *Lynd*, 5 Cir., 1962, 301 F. 2d 818, the Fifth Circuit issued its own injunction which was affirmed after hearing on the merits, 5 Cir., 1963, 321 F. 2d 26, cert. denied, 1964, —— U.S. ——, —— S. Ct. ——, 11 L. Ed. 2d 416. Simultaneously the Fifth Circuit by order found Lynd in civil contempt. See note 18, supra.

with whites—the Mississippi Legislature enacted a package of laws.[27] These are alleged to be unconstitutional for a number of specific reasons. These include the unreasonable, arbitrary disqualification for formal, technical, inconsequential errors, "freezing in" white voters while "freezing out" unregistered Negroes by more stringent standards and requiring publication of the names of applicants, thus subjecting Negroes to harassment[28] by whites, etc.

Of course these serious charges cannot be brushed off as "legal conclusions." The majority takes a double tack to circumvent them. The first seems to be that the truth of these charges—i.e., discriminatory purpose and effect—is of no legal consequence since this goes to the motivation of legislation and this is a subject free from judicial scrutiny. If—and the if is a very tiny one—that ever were the law, *Gomillion* v. *Lightfoot*, 1960, 364 U.S. 339, 81 S. Ct. 125, 5 L. Ed. 2d 110, now makes it clear that unconstitutional racial discrimination gets no cloak of judicial immunity simply because the means used is State legislation. The supposed "motivation" of the legislators is no haven and affords no insulation from judicial inquiry.

The second seems to be that, assuming them to be legally significant, there are no possible evidentiary ways of establishing the truth of the charges. The majority reasoning in this facet seems to run this course. The Government by pretrial interrogatories

[27] These were described as House Bill 900, amending § 3213; H.B. 901 amending § 3232; H.B. 905 amending § 3209.6; H.B. 822, 904; H.B. 903.

[28] Cf. *N.A.A.C.P.* v. *Alabama*, 1958, 357 U.S. 449, 78 S. Ct. 1163, 2 L. Ed. 2d 1488; *Bates* v. *Little Rock*, 1959, 361 U.S. 516, 80 S. Ct. 412, 4 L. Ed. 2d 480; *Gibson* v. *Florida Investigation Committee*, 1962, 372 U.S. 539, 83 S. Ct. 889, 9 L. Ed. 2d 929.

from the defendants was required to state the exact factual basis for these charges, the witnesses to be used on the trial in support thereof, etc. The Government filed detailed responses and presumably put its best foot forward. Consideration of these materials by the Court reveals that these "facts" cannot be established since all of this is either hearsay or otherwise inadmissible.[29] In other words, the majority in concluding that no claim is set forth looks to interrogatories to establish that no claim can be *proved*. But on a motion to dismiss[30] under F.R. Civ. P. 12(b)(6), this may not be done. *Mullins* v. *DeSoto Securities Company,* 5 Cir., 1943, 136 F. 2d 55; *Kohler* v. *Jacobs,* 5 Cir., 1943, 138 F. 2d 440; 2A Barron & Holtzoff § 778, at 391.

This is far from saying, however, that the interrogatories are irrelevant at this stage. Quite to the contrary, once the proper standard is applied, these become the best proof that the Government has at least an arguable basis for establishing its claim on a trial. This brings us to the simple standard of *Conley* v. *Gibson*[31] that "the accepted rule" is "that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Of this problem, the Fifth Circuit has said, "Final dis-

[29] The majority passes it off in this fashion:

"[We further find] that the interrogatories [have] been answered and sworn to by various attorneys for the plaintiff and set forth the results of their investigations and [are] made up of legal or factual conclusions from hearsay evidence or [are] otherwise inadmissible in evidence."

Majority Opinion, Introduction 2, n. 1.

[30] No motion for summary judgment was filed or granted so these materials do not become pertinent under F.R. Civ. P. 12(c) and 56(a).

[31] 1957, 355 U.S. 41, 46, 78 S. Ct. 99, 2 L. Ed. 2d 80.

position of a civil action on the basis of bare bones pleading is a tortuous thing. How a standard so simply expressed, so often repeated, is apparently so often overlooked * * * is hard to understand. We have phrased and rephrased it in these terms. "* * * A motion to dismiss for failure to state a claim should not be granted unless it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of his claim * * *" *DesIsles* v. *Evans,* 5 Cir., 1952, 200 F. 2d 614, 615 * * *." *Arthur H. Richland Co.* v. *Harper,* 5 Cir., 1962, 302 F. 2d 324, 325. Of course the principle is a series of negatives, each of which the movant (Mississippi) had to overcome. The complaint [1] "should not be dismissed * * * unless" [2] it is made to appear "beyond doubt" that the plaintiff [3] "can prove no set of facts" entitling him to relief. Apart from the notion of immunity of legislative motivation, now thoroughly discarded by *Gomillion* v. *Lightfoot, supra,* nothing in the majority opinion even remotely reveals how the defendants carried this burden. But I need not rest on concepts of burden since these interrogatories establish firsthand in great factual detail historic materials from which a trier can infer that these legislative-constitutional provisions came into being to provide the mechanism by which the Negro would be denied the right to vote and how—faithful to its conception—it has worked so well to achieve the present startling disparity. Testing the complaint from the restricted vantage of a motion under F.R. Civ. P. 12(b), the Court cannot at this stage make a blanket ruling against the admissibility of all of this material. Indeed, all, or nearly all, will be plainly admissible under the liberal approach of F.R. Civ. P. 43(a). *Dallas County* v. *Commercial Union Assurance Co.,*

5 Cir., 1961, 286 F. 2d 388; *Monarch Ins. Co.* v. *Spach,* 5 Cir., 1960, 281 F. 2d 401;[32] *Hall* v. *St. Helena Parish School Board,* E.D. La., 1961, 197 F. Supp. 649, aff'd mem., 1962, 368 U.S. 515, 82 S. Ct. 529, 7 L. Ed. 2d 521; *Davis* v. *Schnell,* S.D. Ala., 1949, 81 F. Supp. 872, aff'd mem., 1949, 336 U.S. 933, 69 S. Ct. 749, 93 L. Ed. 1093; *Morris* v. *Harmer,* 1883, 32 U.S. 348, 351 (7 Pet.) (per Story, J.).

IV.

Abundant Likely Evidence to Establish Prima Facie Case

A consideration of a very small part of the material will illustrate the substantial basis for the Government's claim. This material both acquires a meaning from its setting and offers additional proof of that setting. This is vital as the Supreme Court, analyzing the holding in *Davis* v. *Schnell,* M.D. Ala., 3-Judge (81 F. Supp. 872, 1949, aff'd mem., 1949, 336 U.S. 933, 69 S. Ct. 749, 93 L. Ed. 1093) which struck down an "understanding and explain" test had this to say. "The legislative setting of that provision and the great discretion it vested in the registrar made clear that a literacy requirement was merely a device to make racial discrimination easy." *Lassiter* v. *Northhampton County Bd. of Elections,* 1959, 360 U.S. 45, 53, 79 S. Ct. 985, 3 L. Ed. 2d 1072. Of course a part of that setting is what the Fifth Circuit has described as the Mississippi "steelhard, inflexible, undeviating official

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[32] This approach has effectually been adopted by the Special Committee on Evidence of the Judicial Conference of the United States in its Preliminary Study of the Advisability and Feasibility of Developing Uniform Rules of Evidence for the Federal Courts, 30 F.R.D. 73, 79 (1962).

policy of segregation." *United States* v. *City of Jackson, Mississippi*, 5 Cir., 1963, 318 F. 2d 1, 5. The policy takes many forms. It "is stated in its laws."[33]

[33] The policy finds frequent, formal and legislative expression. Emphatic is the Resolution of Interposition, Senate Concurrent Resolution No. 125, adopted by the Legislature of the State of Mississippi on February 29, 1956. See also Miss. Code of 1942, § 4065.3 commanding that all employees of the State and its subdivision "be and they and each of them, in their official capacity are hereby required" to give "full force and effect in the performance of their official and political duties to the Resolution of Interposition * * * and are further directed and required to prohibit, by any lawful, peaceful and constitutional means, the implementation of or the compliance with the Integration Decisions of the United States Supreme Court of May 17, 1954, * * * May 31, 1955, * * * and to prohibit by any lawful, peaceful and constitutional means, the * * * mixing or integration of the white and Negro races in public schools, public parks, public waiting rooms, public places of amusement, recreation or assembly in this State, by any branch of the federal government, any person employed by the federal government, any commission board or agency of the federal government * * * and to prohibit, by any lawful, peaceful and constitutional means, the implementation of any orders, rules or regulations of any board, commission or agency of the federal government, based on the supposed authority of said Integration Decisions * * *. The prohibitions and mandates of this Act are directed to the aforesaid executive branch * * * and all individuals thereof in their official capacity only. Compliance with said prohibitions and mandates of this act * * * shall be and is a full and complete defense to any suit whatsoever in law or equity, or of a civil or criminal nature which may hereafter be brought against the aforesaid executive officers * * * or employees * * * by any person, * * * the State of Mississippi or any other state or by the federal government of the United States, any commission, agency, subdivision or employee thereof."

Part and parcel of this program is the State Sovereignty Commission, Miss. Code of 1942, §§ 9028–31–48 [Laws 1956] of which the Governor is the Chairman. It is charged with the duty "* * * to do and perform any and all acts and things

It is rooted in custom."[34]

The historical materials reveal that a policy so open, so frank, so candid did not accidentally pass by the voter problem. The Fifteenth Amendment, with its

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deemed necessary and proper to protect the sovereignty of the State of Mississippi * * * from encroachment thereon by the Federal Government or any branch, department or agency thereof * * *." Miss. Code of 1942, § 9208–35. Segregation is specifically ordained for: Public schools: Miss. Const., 1956, art. 8, § 207; Miss. Code of 1942, §§ 6220.5 (integration is a criminal offense), 628–03, 6766, 6475–14, 6336–05, 6336–06(a). Public transportation and terminals: Miss. Code of 1942, §§ 2351.5, 2351.7, 3499, 7784, 7785, 7786, 7786–01, 7787, 7787.5. County and municipal jails and state prisons: Miss. Const. § 225; Miss. Code of 1942, §§ 3374.5, 4259, 7913, 7971. Insance and charity hospitals: Miss. Code of 1942, §§ 6881–83, 6927, 6973–74. Further, it is a crime to conspire to overthrow the segregation laws of the State, Miss. Code of 1942, § 2056.

Meredith's admission to the University of Mississippi produced a flood of like enactments. H.B. 2, First Extraordinary Session, 1962, 7 Race Rel. L. Rep. 1247 (1962), provides that "every word spoken * * * and every official act done * * * heretofore or hereafter by any officer, agent or employee of the State of Mississippi in anywise connected with or incident to keeping the Institutions of Higher Learning and the public schools and colleges of this state racially segregated * * * is hereby declared to be and established as the sovereign act or acts of the sovereign State of Mississippi * * * and not the individual act of such person * * * and shall be given full force and effect as the substantive law of this state as the official sovereign act * * * of this state and not the private or individual act * * * of such persons * * *." House Concurrent Resolution No. 18, First Extraordinary Session, 1962, 7 Race Rel. L. Rep. 1248 (1962), recites the developments on the admission of James H. Meredith and the use of federal troops, and petitions the Government of the United States for a redress of grievances including the removal of Meredith from the University.

[34] The Court took judicial notice of this in *Meredith* v. *Fair*, 5 Cir., 1962, 298 F. 2d 696.

plain prohibition, posed difficulties. But a way was found to make segregation complete and total. This was to be accomplished through a number of steps."[35]

Discriminatory Purpose of 1890 Constitution

On February 5, 1890, Mississippi Legislature called for a constitutional convention to revise the Constitution of 1869.[36] Although more than 50% of the population of Mississippi was Negro, only one of the 134 delegates elected to the Convention was a Negro. The Convention opened on August 12, 1890, and by November 1 adopted a new Constitution. Under the 1869 Constitution, all males over the age of 21 years, registered to vote, resident in the State six months and not disqualified by insanity, idiocy, or conviction of certain crimes were eligible.[37] The significant changes in the 1890 Constitution were residence for two years, payment of taxes including the annual poll tax, and

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[35] These were:

(1) An understanding test

(2) Careful districting of whites versus black counties

(3) An electoral system to preserve white control on executive and judicial elections

(4) Use of the pure white democratic primary and

(5) Restriction of party membership.

[36] In the discussion of this subdivision I draw on materials furnished in response to interrogatories requesting specific facts on which the Government based the claims in paragraphs 16 and 17 of its complaint that the chief purpose of the 1890 Convention was to restrict the Negro franchise and to perpetuate white supremacy. The Government filed detailed, voluminous answers titled "Purpose of Laws", all of which I incorporate by reference. At this stage of the proceeding, it is not the Court's function (nor mine) to credit or otherwise determine its truth other than to recognize that it is plausibly available as evidence or may lead to evidence. F.R. Civ. P. 26(b).

[37] Mississippi Constitution 1869, Art. VII, § 2.

a requirement that the applicant be able to read or understand any section of the State Constitution.[38]

The Negroes' presence in the State posed a real problem. Constituting 53.7% of the population in 1870, the Negroes represented 57.6% in 1890. Whites were in control throughout the State, but not without some difficulties which one of the delegates described as "preserving the ascendency of the white people by revolutionary methods" consisting, "in plain words," of "stuffing ballot-boxes * * * carrying the elections by fraud and violence until the whole machinery for elections was about to rot down." Anticipating the Convention, Senator George outlined its work. "Our first duty", he is reported to have said, "is to devise such measures, consistent with the Constitution of the United States, as will enable us to maintain a home government, under the control of the white people of the state."

From the opening note of the Convention, the theme was the single one. President of the Convention, Calhoon, described the race for racial supremacy as "one of the problems you have to encounter" and their challenge was to so arrange "this ballot system * * * as to effect one object." He was soon to spell that out. The temper of the Convention was reflected by the Resolution of the Preamble Committee. It first recited in a number of "Whereas" clauses the existence in Mississippi of the two races, their distinctive prejudices and instincts, the unchanging nature of racial differences so that "one race or the other must have charge and control [of]

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[38] Mississippi Constitution 1890 art. §§ 241, 243, 244. Miss. Const. § 244 requires, among other things, that a voter shall "be able to read any section of the Constitution of this State; or he shall be able to understand the same when read to him or give a reasonable interpretation thereof."

the governments of such states," which would lead to instability "and in as much as the white people only are capable of conducting and maintaining" government, the "negro race * * * being wholly unequal to such responsibility * * *." It then resolved that it was the deliverate judgment of the Convention that "the true and only efficient remedy for the great and important difficulties" described "lies in the repeal of the XV Amendment of the Constitution * * *", so that "such restrictions and limitations may be put upon negro suffrage, by the several States, as may be necessary and proper for the maintenance of good and stable governments * * *."[39]

One delegate referring to the large adult Negro population of "70,000 * * * in excess of the white vote" declared it to be their duty to prevent the Negro majority from overthrowing the present civil government, and then offered a solution in this exclusive method: "How is this end to be accomplished? Only, in my judgment, by such an adjustment of the basis of suffrage as will secure to the white race a fixed and permanent majority. The white people * * * want to feel and know that they are protected * * * against * * * the possibility of Negro rule * * *. They demand this at our hands * * * and nothing short of this will satisfy them or excuse us. The remedy is in our hands. We can if we will afford a safe, certain and permanent white supremacy in our state." Another delegate recognizing that "the powers of government are politically and constitutionally lodged in the Negro race" declared that "the paramount object of this Convention is to transfer it to and invest it in the white race." Apart from re-

[39] Journal of the Proceedings of the Constitutional Convention of the State of Mississippi (Jackson, Mississippi: E. L. Martin, 1890) 303–04.

peal of the Fifteenth Amendment "this could be accomplished" in several ways, one being "by an educational * * * qualification." Others echoed. "That is what we are here for today to secure the supremacy of the white race." With poetic overtones, one remarked, "We are embarked in the same ship of white supremacy, and it is freighted with all our hopes." And President Calhoon made crystal clear the more generalized eloquence of his opening address. Of the Negroes, he is reported to have said: "We want them here, but their own good and our own demands that we shall devise some means by which they shall be practically excluded from government control."

These contemporary views of the delegates are borne out by the long look of history. There have been at least two reunions of the surviving delegates of the Constitutional Convention, one in 1910, another in 1927. These proceedings clearly reveal the purpose of the Convention. The "primary purpose of it was to adopt some provision * * * which would secure to the State a good and stable government, freed from the incubus of Republican or negro rule. * * * All understood and desired that some scheme should be evolved which would effectively remove from the sphere of politics in the State the ignorant and unpatriotic Negro. * * *."[40] In the 1927 meeting, the reunion was called to order with the statement that "* * * on that day, thirty-seven years ago, the Constitutional Convention of 1890 enacted an organic law which gave Mississippians Anglo-Saxon government,

[40] Mayre Dabney, The Proceedings of the Reunion of the Surviving Members of the Constitutional Convention of 1890 (1910).

and adjourned."[41] Discussing the achievements of this Convention, the Chairman of the surviving delegates modestly declared: "It was no easy task for the convention * * * to enact a state constitution practically eliminating from the electors of the State at least eight-tenths of its colored people, citizens of the United States, in the face of the fifteenth amendment * * *." The "fifteenth amendment * * * was not violated" by this Constitution. Rather, it was "only circumvented by Anglo-Saxon ingenuity." Of "the effort * * * to practically disfranchise the Negro race" in the face of the Fifteenth Amendment, another described the "three full weeks" of "debating this momentous issue" and the result that "* * * out of the mill was ground the franchise article in our present constitution, which will ever protect us from an irresponsible class." Convinced that "civilization depended upon the supremacy of the white race in Mississippi," but knowing full well that the right of "the colored man to vote" could not be defeated because of "race, color, or previous condition," the work of the Convention was described as one in which "we belted the whole circle of expedients in legislating against his habits and weaknesses, and, without infringing the provisions of the Constitution of the United States, we provided for perpetual white supremacy in the State of Mississippi * * *."

Judge Thompson, one of the delegates, after remarking that there was "scarcely a conceivable scheme having the least tendency to eliminate the Negro vote that was not duly considered by the convention" then declared, "It is regrettable that all the suggestions * * * were not recorded; had they been preserved,

[41] The Proceedings of the Reunion of the Surviving Members of the Constitutional Convention of 1890, 5 (1927).

the record would be a monument to the resourcefulness of the human mind." [42]

One delegate reciting in detail the problems besetting the State described the four-step structure of legislative apportionment (districting to favor white counties), the electoral plan for the Executive and Judiciary, limiting Negro suffrage by the annual poll tax, and the adoption of the understanding clause. He concluded that these "several suffrage requirements combined" have "as they were intended, reduced the Negro majorities to a negligible political quantity." He then characterized the problem and its solution in these doleful terms. "Concisely and correctly summed up, of the two ills Mississippi chose the lesser. She has exchanged an organic malady for a functional disorder. The Convention substituted a desiccated for a diseased electorate. The ensuing ills of the present state are within the check and correction of the white citizens." [43]

The Understanding Test

The understanding test was early proposed. Despite the considerable advantage this would work in favor of the whites because of the lower white illiteracy rate (white—11%; Negro—76%), some, opposing it, expressed the "fear [that] it will lead to trickery and fraud." Adopting this test "placed in the hands of the officer who is to apply the test the power

[42] R. H. Thompson, Mississippi Constitution of 1890—An Address Delivered to the Mississippi State Bar Association (Biloxi, Mississippi: 1923) 16–17.

[43] J. S. McNeilly, "History of the Measures Submitted to the Committee on Elective Franchise, Apportionment, and Elections in the Constitutional Convention of 1890," Publications of the Mississippi Historical Society. (Oxford, Mississippi: Printed for the Society, 1902) 129–140.

to defraud and disfranchise." Recognizing in those early days what Negro applicants in the Twentieth Century were to experience [44] the test was criticized in blunt language that it didn't "look honest, straightforward or manly." Rather, it "looks like a farce to make a registration officer decide whether a voter rightly interprets a clause of the Constitution." [45] Disclaiming responsibility for "anything so vague in its application and uncertan in its effect," one delegate from a black county reported he had acquiesced on the simple proposition that "half a loaf is better than no bread." There was substantial public approval for the view expressed by one that "the people sent the delegates to the Convention to secure white supremacy, not by a trick or artifice, not by fraud, stratagem, or subterfuge, but by brave, open, honest and honorable methods," declaring that this understanding "section was a fraud upon its face and the trail of the serpent was on it all," he concluded that "the mephitic vapor which arises from the section * * * makes one feel like stuffing the registration books."

One of Mississippi's distinguished legal scholars and Justice of its Supreme Court, George H. Ethridge, [46] does not flinch at the word "discriminate." Of § 241 he remarked, "It is said that this section while it does not discriminate against any person or race, it

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[44] See notes 9, 18, and 26 as to Forrest County and the *Lynd* contempt case; also notes 9 and 11, *United States* v. *Ramsey*, 5 Cir., —— F. 2d —— [No. 20596, February 20, 1964].

[45] "Persuaded that the understanding clause was based on fraud," Louisiana rejected the Mississippi example. See *United States* v. *State of Louisiana*, D.C. La., 1963, 225 F. Supp. 353, 371, n. 46; also many of these or similar materials, are discussed by Judge Wisdom in notes 45, 46, and 88.

[46] George Ethridge, Mississippi Constitution 424–29, 435, 439, 445 (Jackson, Mississippi: Tucker Printing House 1928).

discriminates as to their character and nature." Not elaborating this dialectic, he then recognized that "this is one of the methods of disfranchising the Negro." As a Mississippi lawyer and Mississippi judge, he saw as federal judges were to see a quarter of a century later that with the understanding test of § 244, "* * * a person who cannot read would be largely at the mercy of the registrar * * *. The registrar could pick out any section he desired and read it to him and call on him to explain it."[47]

The White Man's Democratic Primary

Few as they are, difficult as it is for them to become registered, Negro voters are effectively excluded in the elective process through the means of the democratic primary.[48] The heavy hand of the State has been in this too.

Beginning in 1902 with the statutory advent of primaries,[49] the various executive committees of the Democratic Party, state and county, categorically allowed white democrats only to participate. Typical of these actions was the resolution of the State Committee in 1907. "Resolved, in addition to the qualifications prescribed by law for voters in said primaries, all voters therein shall be white democrats." In 1915 the State Committee, rejecting the implication in other

[47] He also discussed with frankness §§ 251 (timing of registration) and 254 (apportionment) and 256 (reapportionment).

[48] These materials also are in the answer volume entitled "Purpose of Laws" in response to interrogatories requiring the Government to state the factual detail in support of paragraph 21 of the complaint that from 1899 to 1952 white political supremacy was promoted by, among other things, Negroes being excluded from the Democratic Primary elections. I treat this as outlined in note 36, supra.

[49] Miss. Sess. Laws 1902, ch. 66.

resolutions that "unjustly reflect on the white democratic elections in this state," declared that "* * * the election just concluded [was] an honest and patriotic expression of the choice of the white democrats of Mississippi."

Perhaps forecasting like indifference to the school decisions ten years later, the decision by the Supreme Court in 1944 holding "white primaries" to be unconstitutional [50] caused no change in result, only in methods. The first big test came in the July 1946 Democratic Primary election for United States Senator resulting in the renomination of Senator Theodore Bilbo. The practices were the subject of investigation by special committee of the Senate.[51] One member of the State Democratic Executive Committee, after acknowledging that "back in the old days, the State Democratic executive committee * * * specified that only white Democrats * * * take part" and the meeting held in 1946 to resolve the question posed by the Supreme Court decision, testified that while all thought the Negro "had a legal right to vote" nevertheless "* * * it was the unanimous opinion—although nothing was spread on in this about it—that they didn't want [the Negro] to vote, therefore, he wouldn't vote * * *." The conclusion, he went on, was that "we thought the best thing to do was to say nothing and not agitate the matter one way or another and let matters take their course, and so that course was pursued." [52]

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[50] *Smith* v. *Allwright*, 1944, 321 U.S. 649, 64 S. Ct. 757, 88 L. Ed. 987; *Terry* v. *Adams*, 1952, 345 U.S. 461, 73 S. Ct. 809, 97 L. Ed. 1152.

[51] Hearings Before the Senate Special Committee to Investigate Campaign Expenditures, 1946, 79th Cong., 2nd Sess. [hereinafter cited Hearings].

[52] Hearings 371–72.

This "do nothing" plan seemed to work.[53] The Government's material shows specific places and names of Negroes attempting to vote in that primary who were turned away.[54]

But the "do-nothing policy" did not long prevail. In 1947 the Mississippi Legislature enacted laws to require that in order to vote in a primary, participants must be in accord with the principles of the particular party.[55] Any person may be challenged at the polls as to his qualifications and accord with the principles of the party.[56] The party organization was not slow to act. Beginning in 1948 by successive actions, it has adopted principles that Negroes could not subscribe to.[57] And these principles soon had the imprimatur of the State of Mississippi.[58]

The answers show by name, date, place and county that the system worked. Negroes trying to vote in primaries were successfully challenged. This con-

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[53] The Senator, as a candiate for renomination, on the eve of the election described it as "Mississippi's white senatorial primary election" and urged "every white Democratic man and woman" to participate in it. Hearings 382.

[54] A number of Mississippi Negro voters testified of their unsuccessful efforts to register or vote, or both. See pp. 140–141, 120–121, 281–282, 225–226, 250–263, 283–284, 298, 317–320, 124–125, 213–215 of the Hearings.

[55] Miss. Sess. Laws 1947, Ex. ch. 17.

[56] Miss. Code of 1942 § 3129.

[57] Resolutions of Mississippi Democratic Party 1948, 1952, 1960.

[58] See 1952 Resolution setting out and endorsing the principles adopted by the Democratic State Executive Committee, Miss. Ses. Laws 1952, Ch. 464.

These principles, legislatively approved, declared among other things: "We believe in the segregation of the races and are unalterably opposed to the repeal or modification of the segregation laws of this state, and we do not favor the practice of nonsegregation."

tinues up to the most recent primaries of 1962. Typical, though spectacular, was the incident in the August 1955 primary and run-off in the all-Negro town of Mound Bayou, Mississippi, Bolivar County. Accompanying the ballot boxes was a written challenge signed by each of the candidates challenging all voters from this precinct (known to be Negroes only) as such voters were not in accord with the declared principles of the Democratic Party.[59] Although there were 295 registered Negro voters, none were allowed to vote. Another device frequently used was the maintenance of two separate poll books by the county registrars, one being the general election poll book which included the names of qualified Negro voters. The other, a primary poll book pursuant to instructions from respective Democratic Executive Committees, excluded Negro registrants.

Separate But Not Equal Education for Negroes

Segregation of the schools, as such, may not appear to be directly involved in voter registration. Certainly a voter registration case cannot be made the vehicle to bring about this change in state custom and practice. But in the massive assault on voter registration here, it is a direct element of the Government's thesis. The charge is that the understanding test, as first conceived in Miss. Const. § 244 and as later amended in 1954 to include read and understand, was, and is, a ready mechanism to disfranchise the Negro because of inferior education. It is the *inferior* education, not its segregated characteristic, that is important. Any appraisal of the quality of education

[59] A copy of the Resolution, H.C.R. No. 7, Ch. 464, Miss. Acts of 1952 (see note 58, supra) was attached.

must, of course, reckon with the open, frank policy of segregation.[60]

Although Negro children of school age have always exceeded the number of white children,[61] the general level of Negro teacher training is below that for whites.[62] Likewise, the amount spent, including teachers' salaries, is far less for Negroes despite recent spectacular increases.[63] Only recently, and then under

[60] The matters discussed in this subdivision come from the volume of answers to interrogatories entitled "Comparison of Education for Negroes and White Persons 1890–1963," comprising 89 pages in response to a request for the factual detail in support of the contention in paragraph 31 of the complaint that public educational facilities for Negroes were and are inferior to those provided for white persons. I treat these as in notes 36 and 48, supra.

[61] State of Mississippi School Census.

Year	White	Negro
1890	207,652	292,581
1910	301,848	410,089
1929	379,678	403,987
1949	309,804	402,349
1960	329,215	337,871

[62] For example, in 1929–1930 out of a teacher corps of approximately 3,900 white teachers and 3,100 Negroes, 3,263 whites were college graduates whereas 2,719 Negroes were not even high school graduates. By 1954 there was considerable improvement, but white teachers with college degrees outnumbered their Negro counterparts by three to one.

[63] The instructional cost per child in average attendance is graphically different:

	1900–1901	1929–1930	1939–1940	1949–1950	1956–1957	1960–1961
White	$8.20	$40.42	$31.23	$78.70	$128.60	$173.42
Negro	2.67	7.45	6.60	28.83	78.70	117.10

(Footnote 63 continued on p. 163.)

the impetus of the 1954 school decisions, has there been any near parity as to the number of consolidated

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The following are selected comparisons of expenditures above the state minimum program listed on a per child basis:

District	White	Negro
Amite Co.	$70.46	$2.24
Benton Co.	59.42	15.63
Claiborne Co.	142.64	19.88
Coahoma Co.	139.33	12.74
Hinds Co.	80.24	10.41
Leflore Co.	175.38	9.52
Madison Co.	171.24	4.35
Yazoo Co.	245.55	2.92

During 1954–1955 every school district spent more for whites than Negroes. It ran from a high of $600, Glenwood District, Tallahatchie County (whites) to a low of $45, Senatobia District, Tate County (Negroes) averaging as follows:

	White per pupil cost	Negro per pupil cost
County average	$161.00	$87.00
Separate district average	181.00	106.00

Even these figures may be deceptive. In the Report of a Study of the Education for Negroes in Sunflower County, Mississippi (Bureau of Educational Research, School of Education, University of Mississippi: March 1950), it was pointed out, at 134–35, "Sunflower County in 1939–40 received $73,626 per capita fund. Since 79 per cent of the educables at that time were Negroes, $58,165 was the amount received on the basis of the Negro children. However, only $35,564 was spent for 'instruction' for the Negro children. Evidently $22,601 of this amount was expended elsewhere—probably on the schools for the whites. In the last two years the difference in the amount received and the amount [not spent for Negro children] is more than twice the $22,601 figure."

versus unconsolidated (one and two-teacher schools).[64] The same is true of enrollment in high schools, a matter of much consequence in a test designed to elicit interpretation and understanding of a constitutional provision and the duties of citizenship.[65]

This is not a mere matter of statistics. The responsible officials of Mississippi have publicly recognized the disparity in educational facilities and the necessity for substantial improvement.[66] Governor Wright in 1950 urged action. "We face," he told the joint session of the Legislature, "a serious problem in the matter of providing comparable educational opportunities for the two races in our State." He identified the problem in the three phases of teacher salary adjustments, transportation, and building facilities.

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[64] Between 1910 and 1930 Negro schools were not consolidated. As of 1930–1931, the make-up of the schools was as follows:

	Number consolidated schools	Number unconsolidated schools	Number one-teacher schools	Number two-teacher schools
White	969	789	515	202
Negro	16	3,484	2,413	832

[65] In 1930–1931 out of 752 secondary schools, only 46 were Negro with an enrollment of 5,012 about 1/10th of that for whites (49,742). By 1953 the enrollment ratio was still nearly three to one (474—285 schools) with Negro enrollment 26,667 compared with 61,323 whites. Fortunately for present and future generations, 1961–62 shows much improvement (white 77,694; Negroes 48,798).

[66] It was not always so. Governor Vardaman recalling his proposal for a constitutional amendment to "control the distribution of a public school fund so as to stop the useless expenditure in the black counties" is reported as saying of a bill providing money for a Negro school in Holly Springs, "Did I sign it? No. I killed the bill when I killed the school * * *."

He recommended legislation for equalization of teacher pay "and removing any discrimination as between the races." Recognizing that what existed was not separate and equal, he urged "that a program be enacted providing for equal facilities between the races recognizing that children of both races are entitled to equal opportunities," in, of course, segregated facilities.[67] The same views were echoed by Governor White two years later. "It is true that there is a wide variation in educational opportunities between the races."[68]

And various official biennial reports of the State Superintendent of Public Education have portrayed this great disparity in graphic terms. Over a wide space of years, they pinpoint the causes. For example, "in many counties * * * Negro children are forced to attend school in mere shacks or in church houses."[69] As of 1930–1931, "98.3 percent of all children in schools for the colored race were in grades one to eight inclusive and 1.7 percent in grades nine to twelve. The great majority of colored children never got beyond the sixth grade."[70] The fact is "that we spend less money in Mississippi per child in the schools for the Negro race than in the schools for the white race."[71] Teacher quality for Negroes suffered from lack of adequate colleges. As a conse-

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[67] Message by Governor Fielding L. Wright to the Joint Session Mississippi Legislature, January 3, 1950.

[68] In 1953 Extraordinary Session Senate Journal 970.

[69] Biennial Report and Recommendations of the State Superintendent of Public Education to the Legislature of Mississippi for the Scholastic Years 1929–30 and 1930–31, 45 [hereinafter cited Biennial Report].

[70] Twenty Years of Progress 1910–1930 and A Biennial Survey Scholastic Years 1929–30 and 1930–31 of Public Education in Mississippi 130 [hereinafter cited Twenty Years of Progress].

[71] Twenty Years of Progress 107.

quence "the quality of work done in the school room by the majority of negro teachers would not rank very high when measured by any acceptable minimum known to the leaders in educational thought." [72] The Negro teaching force had "an average of 50 enrolled pupils each", but the average was deceptive since "teachers in the lower grades frequently have in their charge from seventy-five to one hundred and fifty pupils. * * *." [73] In 1933–35, out of 3,700 Negro schoolhouses, only two-thirds were publicly owned. For the other third (1,440), schools were "conducted in churches, lodges, old stores, tenant houses, or whatever building is available." [74]

As late as 1937 "ninety-four percent of the educable Negro population of high school age" were "not in school * * *." [75] This was hardly surprising since "There [were] twenty-eight counties in Mississippi which [did] not have any recognized high school facilities for Negroes." [76] As of that same period, the state board prescribed $28 per month for a six-month term ($170 per year) for Negro teachers. It was, of course, "obvious that the salary problem is one of our real problems * * * in Mississippi." [77] Even physical facilities as late as 1945 represented "one of the most

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[72] Twenty Years of Progress 90.

[73] Biennial Report 1933–35, 41.

[74] Ibid.

[75] Biennial Report 1935–37, 13.

[76] Ibid. Negroes "schooled" in that era are still a factor since approximately 8.6% (79,183) of the State's 1960 Negro population were born between 1923 and 1931. (Assuming entry to first grade at 6 years, and schooling terminating grade eight.) United States Bureau of the Census, United States Census of Population 1960, General Social and Economic Characteristics, Mississippi, Final Report PC(1)–26C, Table 37, at 26–112 (1961).

[77] Biennial Report 1937–39, 16.

pressing needs in Mississippi" to meet the simple but then unattained object that "schoolhouses need not be elaborate, but they should at least be sanitary, comfortable and adequate." [78] The report of 1955–57, noting considerable progress, but recognizing "that public schools for Negroes have been poor in the past" made specific recommendation for "getting all communities to meet the responsibility of truly equalizing facilities" for Negro and whites.[79] It recommended also increase in graduate training for Negro teachers, administrative supervision for Negro elementary schools since "many elementary teachers are not fully qualified," and local supervision of classroom teaching since "the fact that public schools for Negroes have been poor in the past * * * has a direct bearing on the quality of instruction being done * * *." [80]

All of these findings have been confirmed by various professional studies, including those for the University and the State Legislature.[81]

Pursuant to legislation in 1953, all counties were to make educational surveys of educational facilities and submit reorganization plan by July 1, 1957. Surveys were to be made by specified agencies of the state university system. The materials furnished by the Government contain summaries and extracts from

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[78] Biennial Report 1943–45, 21–22.

[79] Biennial Report 1955–57, 40, 41.

[80] Biennial Report 1957–59, 40, 41.

[81] See A Report of the Committee of Investigation of the Teacher Training Facilities for Negroes in Mississippi, Bulletin No. 61 (1930) State of Mississippi Department of Education; Higher Education in Mississippi: A Survey Report to the Board of Trustees, Institutions of Higher Learning (1954) John E. Brewton, Director; Public Education in Mississippi: Report of Mississippi Legislative Education Study Committee, December 1961; Public Education in Mississippi: Report of Advisory Study Groups Institutions of Higher Learning, 1961.

1955 to 1957 reports made in many counties.[82] As to Negro schools, they are nearly all the same: with per capita per pupil expenditures running frequently two to one in favor of whites, Negro school buildings are run-down, inadequate, unlighted, overcrowded, without desks, blackboards or needed facilities, staffed by overworked, underpaid, undertrained Negro teachers.[83]

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[82] The Reports extracted are by Dr. John E. Phay, Director Bureau of Educational Research, University of Mississippi or Dr. Ralph S. Owings, Head and Professor of Educational Administration, Mississippi Southern College.

As for another era (see note 76, supra), those "schooled" in the 1955–57 era are important. Those then attending (grades 1 through 12) span birth years of 1939–1951. Negroes born during that period comprise approximately 24.6% (226,500) of the 1960 Negro population. See United States Bureau of The Census, United States Census of Population 1960, General Social and Economic Characteristics, Mississippi, Final Report PC(1)-26C, Table 37, at 26–112.

[83] The following comments concerning Negroes in various county reports are typical: "The program is very weak and inadequate * * *. These boys and girls are not getting a program of education that appears to be of too much consequence. * * *. The listing of the offerings would not reveal anything that would prove valuable." "The buildings for Negroes are most inadequate and in a deplorable condition." "There is a dearth of teaching materials and equipment in all the Negro schools. There is a shortage of chalk boards, bulletin boards, reading materials, charts, maps, and library books." "The Negro buildings are most inadequate and in a deplorable condition * * *. It is quite evident from examination of the pictures of the schools that the Negro situation is pathetic." In a one-teacher school, "the windows are inadequate, * * * it has no lights and the furniture consists of

The 1890 Plan Has Worked

In the field of racial discrimination, figures do count. Figures tell the best, if not the whole, story. United States ex rel. *Seals* v. *Wiman*, 5 Cir., 1962, 304 F. 2d 53 at 66, 67.[84] The figures here are little less than devastating.[85] In many counties other than the six listed in the majority opinion (Part IV), the actual result shows that the percentage of registered Negro voters runs from a low of 0% to a high of 2.9%.

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chairs and benches. There is no water supply * * *. Teaching aids, such as chalk boards and bulletin boards are desired." Another one-teacher schoolroom "has a metal roof that leaks. The windows are inadequate and half the panes are missing * * *. There are no lights and the furniture is home-made benches. There is no water supply at all." In another, "the teaching aides are most inadequate. The entire facilities are not suitable for school." Of another county, "It may be said that throughout the entire county no high high school for Negroes exists which presents a curriculum attractive enough to hold boys and girls in school. The needs of these youngsters are not being met." It "may be noted * * * that in the Negro elementary schools, the quality of education and the materials available for teaching seem to be far below that in the white schools. * * *." In "* * * both * * * the quality and quantity of housing, in the availability of instructional materials * * * the Negro elementary schools are below those of the white schools. * * *."

[84] *Brown* v. *Allen*, 1953, 344 U.S. 443, 73 S. Ct. 397, 97 L. Ed. 469; *Smith* v. *Texas*, 1940, 311 U.S. 128, 61 S. Ct. 164, 85 L. Ed. 84; *Speller* v. *Allen*, 1953, 344 U.S. 443, 477, 73 S. Ct. 397, 97 L. Ed. 469.

[85] I treat this as in notes 36, 48, and 60. The material comes from the Government answers stating factual detail in support of the statistical allegations in the complaint.

This is in contrast to a low of 57% and a high of 100% for whites in the same counties.[24]

Of course there might be several explanations for these figures. One might be that this is what the Negroes want. Another might be that this is just accidental. A third might be that this proves the effectiveness of a carefully contrived plan to exclude the Negro. A choosing from those possible inferences is not a function of pleadings or a motion to dismiss. On a motion to dismiss, the Court cannot, for example, declare that this is all one of nature's accidents. And in the face of other evidence which the Government proposes to offer, it cannot be charged off at this early stage as voluntary conduct by many thousands of adult Mississippi Negroes. For in like response to interrogatories seeking factual basis for the allegations in the complaint that Negroes have regularly, consistently been denied the right to register or vote or both, the Government, citing chapter, verse, county, date, time, name, and circumstance, has identified thousands of Negroes who have sought but

[24] See the following table:

June 1962

County	Whites			Negroes		
	Number over 21	Registered	%	Number over 21	Registered	%
Panola	7,639	5,309	69	7,250	2	0.028
Tunica	2,011	1,436	71	5,822	42	.72
Marshall	4,342	4,162	96	7,168	57	.8
Yazoo	7,598	7,130	93.0	8,719	256	2.9
Copiah	8,153	7,532	92.0	8,407	25	.29
Madison	5,622	5,458	97	10,366	121	1.1
Clarke	6,072	5,000	83	2,998	1	.03
Tallahatchie	5,099	4,330	85	6,483	5	.07
Holmes	4,773	3,530	74	8,757	8	.09
Kemper	[1] 3,113	[1] 3,224	100	3,221	30	.9
Forrest	22,431	12,655	57	7,495	22	.3
Lamar	6,489	5,593	91	1,071	0	0

[1] This is as reflected in the answers. Doubtless one or the other figure is in error.

who have been denied these rights.[87] This leaves as plausible the inference asserted by the Government—that the 1890 plan supplemented by inferior schools in a segregated society, operating in a closed white man's democratic primary with changes in 1954, 1960, and 1962, freezing in a large body of whites while freezing out thousands of Negroes—has achieved its purpose. Only a trial, at least in the present posture of this case, can resolve the choice.

That inference, once drawn, after a trial either as a matter of fact or as a matter of law, will go a long way—if not the whole way—toward establishing that the entire voter-registration-voting structure is invalid, not because it has been discriminatorily applied, but because it was meant to work that way and has.

Meeting the Exigencies From the Law's Reverses

The rapidity with which even the slightest breaches in this Maginot Line were closed demonstrates a continuing purpose, not only to institute but to maintain a structure of discrimination. Only brief mention may now be made of some of the more vivid of these.

And For Or

The first is the amendment to § 244 to prescribe a read and understand test. Though *Peay* v. *Cox*, 5 Cir., 1951, 190 F. 2d 122, opened up the door to Negroes who could read *or* understand, the effort in

[87] These are found generally in the answer volumes. These answers were 19 (f), (g), relating to paragraph 69 of the complaint. These weigh approximately 35 pounds, and are over one foot thick. I treat these as in notes 36, 48, 60, and 85.

This illustrates also the significance of evidence of discrimination on the Government's theory. It is not to show discriminatory application, but to show the result of a discriminatory structure.

1952 to amend the Constitution was unsuccessful. In 1954 the full impact was soon realized under the pressure of the 1954 Supreme Court school decision. With effective aid from White Citizens Councils, both the voter registration amendment and the school amendment giving the Legislature the discretion to maintain public schools were adopted.[88]

Was this action just a coincidence? Or was it an immediate and effective response against the possibility that the great number of under-educated adult Negroes, the product of segregated schools then acknowledged to be inferior, would now at least be eligible to orally state an understanding or interpretation? And if not now, would they not in the early future be eligible as more and more Negroes would receive an education of equal quality as a result of "integrated" attendance at formerly all white schools? At this stage of the proceedings, the minimum called for is a trial. For if those were the purposes, then *Gomillion* v. *Lightfoot,* 1960, 364 U.S. 339, 81 S. Ct. 125, 5 L. Ed. 2d 110, would permit both judicial inquiry into, and judicial redress for, such racial discrimination.

The 1962 Package

The complaint describes in detail the Government suit against Registrar Lynd, Forrest County, including the appeal, the injunction pending appeal by the Fifth Circuit resulting thereafter in contempt orders, hearings, judgments and affirmance.[89] Consequently, the Government is in no sense confined to the material

[88] This material is found in the Government's answers. I treat it as in notes 36, 48, 60, 85 and 87.

[89] See notes 9 and 18.

set forth in answers to the interrogatories.[90] The Government may also legitimately point to all of the now publicly known developments in the *Lynd* cases to demonstrate that it can prove its theory. In a nutshell, the theory is that most, if not all, of the 1962 package of bills[91] was a direct, immediate effort to overcome or circumvent successive adverse decisions of the Fifth Circuit, particularly in the *Lynd* cases.

The *Lynd* case essentially charged discriminatory application of laws otherwise assumed to be valid. One of the principal weapons for discriminatory administration was the registration application form.[92] Contrary to the bland assumption in the majority opinion that, "No tricky application form is alleged or exhibited," Majority Opinion Part XIV, at 66, the developments in the *Lynd* cases demonstrated that the form was loaded with ambiguities, pitfalls, and traps for the unwary, and as such, was a ready-made device for racial discrimination.[93]

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[90] These materials are found in the multi-volume answers. I treat these as in notes 36, 48, 60, 85, 87 and 88. Also, at least at this stage, it is proper to take judicial knowledge of the records and proceedings of all of the *Lynd* cases.

[91] See note 27.

[92] This form is promulgated by the State Election Board, Miss. Code of 1942, § 3209.6, as amended recently in 1962 to require a space on the form to reflect information as to good moral character.

[93] For example, items "3. State your age and date of birth:", "8. For how long have you resided in Mississippi?" "10. Specify the date when such residence began," called for identical information for a native-born continuous resident, yet discrepancies resulted in rejection. Item "12. Check which oath you desire to take: (1) General —— (2) Ministers —— (3) Ministers' Wife —— (4) If under 21 years at present, but 21 years by date of general election ——." Item "21. Sign the oath or affirmation named in Question 12." was followed by "(a) GENERAL and/or SPECIAL OATH"consisting of an affidavit

The greatest source of discrimination, of course, was in the requirement that the applicant copy a section of the Constitution selected by the registrar (Item 18) and then write his reasonable interpretation and meaning thereof, (Item 19) and also write a statement of his understanding of the duties and obligations of citizenship (Item 20).[94] Those sections of the Mississippi Constitution given frequently to Negroes but never to white were § 112,[95] § 124,[96] § 160,[97]

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with a line for signature marked "Applicant's Signature As To Oath" and "(b) OATH OF MINISTER and/or MINISTER'S WIFE" with an affidavit and a line marked "Applicant's Signature As To Oath." Immediately below the line for minister's signature there was another line marked "The applicant will sign his name here." Though otherwise perfectly filled out, Negro applicants were frequently rejected because of failure to sign the bottom line which most (white and Negro) construed to be the place for a minister-applicant to sign. Both the (a) general and (b) minister's oath had blanks to fill out residence "in this State two years, and in —— Election District of _____ County one year." Even though answer to Item "9 Where is your place of residence in the District" gave a correct address which would enable the registrar to know precisely from voting precinct records the proper voting District for the applicant and the answer to Item 10 "Specify the date when such residence began" would establish that it exceeded two years and one year respectively, the application was rejected if the wrong election district was named in the blanks of the oath.

[94] "Item 20. Write in the space below a statement setting forth your understanding of the duties and obligations of citizenship under constitutional form of government."

[95] § 112. "Taxation shall be uniform and equal throughout the state. Property shall be taxed in proportion to its value. The Legislature may, however, impose a tax per capita upon such domestic animals as from their nature and habits are destructive of other property. Property shall be assessed for taxes under General Laws, and uniform rules, according to its true value. But the legislature may provide for special mode of valuation and assessment for railroads, and railroad

§ 224,[98] and § 273,[99] all exceedingly long, complex provisions having little relation to the usual notions of the nature of our constitutional government and its structure. In contrast, simple, direct and more fundamental ones were given frequently to whites, but never to Negroes, such as § 118,[100] § 139,[101] § 226.[102]

The *Lynd* case centered about the use of the application form. In the injunction pending appeal (later affirmed), the Fifth Circuit found a series of specific discriminations and enjoined the Registrar from committing specific acts. 301 F. 2d 818 at 823. The registrar was ordered to give Negroes the benefit of the same type of assistance theretofore given to white persons; to cease rejecting applications of Negroes

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and other corporate property, or for particular species of property belonging to persons, corporations, or associations not situated wholly in one county. But all such property shall be assessed at its true value, and no county shall be denied the right to levy county and special taxes upon such assessment as in other cases of property situated and assessed in the county."

[96] § 124. This section is a 161-word, detailed explanation of the Governor's pardoning power and the pardoning mechanism.

[97] § 160. This section is a long description of the jurisdiction of the Chancery Court elaborating technical distinctions between law and equity in real estate proceedings.

[98] § 224 covers the hiring of convicts for private or public work.

[99] § 273. This section is a 155-word, detailed description of the constitutional amendatory mechanism.

[100] § 118. "The Governor shall receive for his services such compensation as may be fixed by law, which shall neither be increased nor diminished during his term of office."

[101] § 139. "The Legislature may empower the Governor to remove and appoint officers, in any county or counties of municipal corporations, under such regulations as may be prescribed by law."

[102] § 226. This section contains a one-sentence restriction on hiring of convicts.

without giving the cause or reason for rejection; and to cease rejecting obviously qualified Negroes for inconsequential or no errors.

Typical of the immediate response was Miss. Laws 1962, Ch. 570. Prior to the amendment, this section required that an applicant fill out the application form without assistance or suggestion from any person. The amendment added that the requirements of the statute were mandatory; that no application shall be approved or the applicant registered unless all blanks on the application form are "properly and responsively" filled out by the applicant; and that both the oath as such and the application form must be signed separately by the applicant. And to inject a new standard which would defy a Federal Appellate Court determination that particular applicants were qualified as a matter of law.[108] Miss. Laws 1962, Ch. 575 was enacted to implement the 1960 Amendment to § 244 by inserting a good moral character requirement. Another bill required publication of the names of applicants and allowed members of the public thereafter to challenge such applicants. Miss. Laws 1962, Ch. 572.

V.

No Legal Obstacle to Relief

When the true nature of the Government's theory is kept in mind, none of the legal arguments advanced by the majority serves as a stumbling block.

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[108] This has been done at least twice by the Fifth Circuit. *Alabama* v. *United States*, 5 Cir., 1962, 304 F. 2d 583 at 584, 594, aff'd mem., 1963, 371 U.S. 37, 83 S. Ct. 145, 9 L. Ed. 2d 112. And see paragraph 2a the unpublished contempt order in the *Lynd* case, certiorari denied, 1964, —— U.S. ——, —— S. Ct. ——, 11 L. Ed. 2d 416; 5 Cir., 1963, 321 F. 2d 26.

If from evidentiary materials, the Government establishes [104] that the disparity is the result of a structure instituted or thereafter maintained for the purpose of denying the Negroes' right to vote, then each and every statutory-constitutional element helpful to the operation of the illegal machine must fall.

Apparent validity on the *face* of such enactments will be of no significance. *Gomillion* v. *Lightfoot*, 1960, 364 U.S. 339, 81 S. Ct. 125, 5 L. Ed. 2d 110; and see *Yick Wo* v. *Hopkins*, 1886, 118 U.S. 356, 6 S. Ct. 1064, 30 L. Ed. 220; *Lane* v. *Wilson*, 1938, 307 U.S. 268, 59 S. Ct. 872, 83 L. Ed. 1281. Hence cases such as *Williams* v. *Mississippi*, 1898, 170 U.S. 213, 18 S. Ct. 583, 42 L. Ed. 1012, and *Darby* v. *Daniel*, S. D. Miss., 1958, 168 F. Supp. 170 which the majority (see Part XII) stresses as a holding "on the face" are of little consequence as precedents or for persuasiveness.

The extended preoccupation of the majority (see Part X) with the thesis that voter qualification is exclusively committed to the states is neither accurate nor significant. All bends to the Federal Constitution.[105]

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[104] Whether it will be able to establish all or any portion of the supporting facts either as a matter of fact-finding or as a matter of law, either in advance of, or after, trial (see *Carss* v. *Outboard Marine Corp.*, 5 Cir., 1958, 252 F. 2d 690; *Camilla Cotton Oil Co.* v. *Spencer Kellogg and Sons*, 5 Cir., 1958, 257 F. 2d 162; *Smoot* v. *State Farm Mutual Automobile Ins. Co.*, 5 Cir., 1962, 299 F. 2d 525), I do not know. That question is not before me or the Court since the Government has not yet filed any motion for affirmative relief at this stage, either for summary judgment or otherwise. I intimate no judgment on these factual matters.

[105] See Judge Wisdom's detailed analysis of this shibboleth in *United States* v. *State of Louisiana*, D.C. La. (3-Judge), 1963, 225 F. Supp. 353, 358.

Nor could the elusive, undefinable "good moral character" test (see Part XIII) be employed as an intended or effective instrument of discrimination, no matter how well established it may be as a statutory requirement for professional or business permits. Standards of this kind, otherwise unobjectionable and often praiseworthy, must not be available to shield purposeful discrimination or conceal its exercise. The Fifth Circuit, for example, held a similar requirement for alumni recommendation unconstitutional since no Negro could hope to get such assistance from Mississippi white persons. *Meredith* v. *Fair,* 5 Cir., 1962, 298 F. 2d 696, 701–702; and see also *Ludley* v. *Board of Supervisors Louisiana State University,* E.D. La., 130 F. Supp. 900, aff'd, 5 Cir., 252 F. 2d 372, cert. denied, 1958, 358 U.S. 819, 79 S. Ct. 31, 3 L. Ed. 2d 61. And certainly a close look must be given to a test when the whole public—from the publication of the applicant's name—is invited to challenge the "good moral" character of a Negro. If First Amendment rights of freedom of association and expression are protected against such publicity (see note 28, supra), then surely Fifteenth Amendment rights are just as deserving.

Finally, nothing in *Lassiter* v. *Northhampton County Board of Elections,* 1959, 360 U.S. 45, 79 S. Ct. 985, 3 L. Ed. 2d 1072, affords any basis for supposing that either a literacy test or an understanding test is free from attack when purposefully chosen to *deny,* not grant, voter privileges.

Discrimination against Negroes, on the Government's theory, has not resulted from discriminatory administration of valid laws. It has happened because it was meant to happen. To eradicate this evil, the attack need not be made piece by piece. It may be made by a frontal assault on the whole structure.

What the Government is saying is that Mississippi knows that this was the purpose, and now all it wants is for the Court to see what "all others can see and understand," [106] since there "is no reason why [courts] should pretend to be more ignorant or unobserving than the rest of mankind." [107]

I therefore respectfully dissent.

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[106] Chief Justice Taft in *Bailey* v. *Drexel Furniture Co.*, 1922, 259 U.S. 20, 37, 42 S. Ct. 449, 66 L. Ed. 817.

[107] *Affiliated Enterprises* v. *Waller*, 1 Terry 28, 1 Del. 28, 5 A. 2d 257, 261.

APPENDIX C

United States District Court, Southern District of Mississippi, Jackson Division

Civil Action Number 3312

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF MISSISSIPPI, ET AL., DEFENDANTS

JUDGMENT

THIS CAUSE coming on for hearing and the Court of three judges having heard and considered same upon the motions of the Defendants to dismiss the action for failure to state a claim upon which relief can be granted; it is ordered, adjudged and decreed, upon the grounds and for the reasons set forth in the opinion this day filed, that said motions to dismiss and each of them be and same hereby are granted, and said action is dismissed at the cost of Plaintiff, United States of America.

ORDERED, ADJUDGED AND DECREED this 6th day of March, 1964.

BEN F. CAMERON,
United States Circuit Judge.
HAROLD COX,
United States District Judge.

From said judgment, Judge Brown dissents.

U.S. GOVERNMENT PRINTING OFFICE: 1964

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963.

No. _____

UNITED STATES OF AMERICA,
Appellant,

vs.

THE STATE OF MISSISSIPPI, ET AL.,
Appellees,

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

MOTION TO AFFIRM JUDGMENT OF THE DISTRICT COURT

Appellees move this Honorable Court to affirm the Judgment entered by the District Court on the 6th day of March, 1964[1], and in support of this motion would show that it is manifest from the record and the opinions of the court below that the questions on which the decision of the cause depend are so insubstantial as not to need further argument.

1. Appendix C, p. 180, Appellant's Jurisdictional Statement.

A clear understanding of the basic matters presented to the three-judge court below taken in conjunction with the review of the opinions of that court can save this court the needless burden of further procedures in this appeal.

The thrust of the complaint was that certain constitutional provisions and statutory laws of the State of Mississippi violated the Constitution of the United States. This suit went far beyond the limits contemplated by 28 *U.S.C.* 2281, *et seq.*[2] It did not seek to test the State's Constitutional provisions and laws by way of a suit for an injunction directed against the official charged with the enforcement, instead it made a broadside attack against the intangible State itself, state officials not connected with enforcement, and six individual and unrelated registration officials.

The lower court's decision as to the various categories of defendants may properly be analyzed thus:

The State of Mississippi—The Sovereign State was held to be an improper party, principally to avoid a needless

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2. These statutes were omitted from Appellant's Jurisdictional Statement. Section 2281 provides:

> "§ 2281. *Injunction against enforcement of State statute; three-judge court required*
>
> "An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute *by restraining the action of any officer of such State in the enforcement or execution of such statute* or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title." (Emphasis supplied)

Of course if there was no jurisdiction under these statutes in the court below, there is no jurisdiction in this court on direct appeal.

decision on a substantial question[3] as to the constitutionality of the Federal statute, 42 *U.S.C.* 1971; alleged by the appellant to give federal executive permission for a direct right of action against the State. Both because the State was not enforcing the Constitutional provisions and statutes called in question and because the court determined it would not be appropriate to inject the issue as to the constitutional validity *vel non* of the federal statute in a situation where there were registrars in office subject to suit and injunctive relief, the complaint was held improperly laid as to the State of Mississippi.

The State Board of Election Commissioners—These three defendants have only a minor ministerial function under the statutory scheme of the election laws of the State of Mississippi. They are not enforcement officials. The complaint does not charge them with any discriminatory discharge of their duties, but merely with prescribing such forms as the statutes required for use by others in the actual administration and enforcement of the laws. These defendants were held to be needless and improper parties in the three-judge court proceeding.

The Six County Registrars—No charge of joint conduct or action is made against these, the only actual enforcement officials under Mississippi voting laws. The court therefore ruled that their joinder in one cause of action was not permissible under Rule 20(a). No charge of discriminatory application was made and, in fact, counsel for the appellant, in their oral arguments, insisted that the case intended to be presented was one involving non-dis-

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3. See Section V, p. 39, *et seq.*, Judge Cameron's Opinion, Appendix B, Appellant's Jurisdictional Statement, and the cases therein cited, particularly *U. S.* v. *Alabama*, 362 U.S. 602, and *U. S.* v. *Adkins*, 323 F.2d 733, which held the constitutional question to be open.

criminatory application of laws which in and of themselves were alleged to be unconstitutional. The court dismissed the cause of action as to these defendants both because the sole statutory basis authorizing the United States to maintain the action here, 42 *U.S.C.* 1971, provided no authority to the United States to attack State statutes on the basis of their constitutionality and because the statutes attacked were constitutional.

Appellant's contentions of substantiality are:

1. The alleged case is important.
2. The Federal executive can attack the constitutionality of a state's entire system of franchise laws under the authority of 42 *U.S.C.* 1971.
3. The decision conflicts with the three-judge court decision in *U. S.* v. *Louisiana,* 225 F. Supp. 353.

The short answer to Proposition 1 is that an executive official's determination that he needs or ought to have legislative authority can never operate to vary or amend a legislative grant that does not include that authority, even if the court agrees that it ought to have been granted. The Justice Department's political concept that this suit will enfranchise a half million persons completely ignores the legal fact that the 15th amendment *prohibits.* It does not *confer* the franchise on any citizen.

The plain words of 42 *U.S.C.* 1971 deny efficacy to the second proposition advanced by appellant. This statute by its every term discloses a legislative intention to permit citizens "otherwise qualified by law to vote" to exercise that privilege *without regard to contrary State statutes or constitutional provisions.*[4] This obviously (a) envisions

4. 42 *U.S.C.* 1971(a), also note the 2nd paragraph of Subsection (e).

the existence of state franchise laws to provide qualifications and, (b) provides for relief without an attack by the federal government against a coordinate sovereign. This statute cannot be impliedly amended by pointing to cases holding that an individual citizen has a right to seek three-judge injunctive relief from the enforcement of an allegedly unconstitutional statute. Procedurally, the suit is improper. The majority and concurring opinions plainly demonstrate that substantively the claim is also without support. No case cited by appellant or extant in the decisional authorities of this court upholds the right of the United States to bring or maintain this action.

The third ground of substantiality asserted is a conflict between the District Court's ruling here and the holding of the District Court in *United States* v. *Louisiana, supra.* This opinion and the facts behind it are distinguished in the majority opinion.[5]

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5. Section XII, pp. 74-78, Jurisdictional Statement, Appendix B. We particularly call to the court's attention the discussion of the connotation of the word "read" in its ordinary and literal meaning. (Please note the printing error which occurs on pages 76 and 77. The material from the 14th line on page 76 after the word "letters", through and including the hyphenated word "letters" in the 16th and 17th line on page 77 is repetitious.)

For all of the reasons set out in the majority and concurring opinions below and because of the manifest insubstantiality of the questions presented, the judgment of the lower court should be affirmed.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 73

UNITED STATES OF AMERICA, APPELLANT

v.

STATE OF MISSISSIPPI ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the district court (R. 1507–1563) is reported at 229 F. Supp. 925.

JURISDICTION

The judgment of the district court dismissing the complaint was entered on March 5, 1964, and a notice of appeal filed on April 10, 1964. Probable jurisdiction was noted on June 22, 1964. The jurisdiction of this Court rests on 28 U.S.C. 1253.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article VI, clause 2, of the Constitution, the Fifteenth Amendment, Sections 1971 and 1974 of Title 42 of the United States Code, Section 101((a)

101(a) of the Civil Rights Act of 1964 (P.L. 88–352), Sections 241–A and 244 of the Mississippi Constitution, Section 3209.6 of the Mississippi Code and Chapters 570, 571, 572 and 573 of the Mississippi Laws of 1962 are reproduced in Appendix A, *infra*, pp. 99–115.

QUESTIONS PRESENTED

1. Whether the United States is authorized to bring suit to declare invalid and enjoin the enforcement of State laws and constitutional provisions relating to the right to vote on the ground that they are in violation of the Constitution and laws of the United States.

2. Whether the following are proper parties to the proceedings: the State of Mississippi; the members of the State Board of Election Commissioners; the named county voting registrars.

3. Whether the complaint states a cause of action with respect to Sections 244 and 241–A of the Mississippi Constitution, so much of Section 3209.6, Mississippi Code, as permits the destruction of voting records, and Chapters 570, 571, 572 and 573 of the Mississippi Laws of 1962 (formerly House Bills 900, 903, 822 and 904), which are alleged to be invalid as in violation of the Fifteenth Amendment to the United States Constitution and the Civil Rights Acts of 1957, 1960, and 1964.

STATEMENT

On August 28, 1962, pursuant to 42 U.S.C. 1971 and 28 U.S.C. 1345, the United States instituted this suit by filing a complaint in the United States District

Court for the Southern District of Mississippi. The defendants—appellees here—were the State of Mississippi, the three members of its Board of Election Commissioners, and six county registrars (R. 1–2).

A. THE COMPLAINT

As amended on March 12, 1963 (R. 66–68), the complaint alleged that in Mississippi, approximately 500,000, or 67 percent, of the white persons of voting age and approximately 20,000 to 25,000, or 5 percent, of the Negroes of voting age, are registered to vote (R. 6), and that, in the six counties involved in this case, voting age population and registration statistics are as follows (R. 2):

	White		Negro	
	Voting age population	Registration	Voting age population	Registration
Amite	4,449	3,295	2,560	1
Coahoma	8,708	8,376	14,604	1,371
Claiborne	1,688	1,440	3,969	138
Lowndes	16,460	5,869	8,362	63
LeFlore	10,274	9,803	13,567	288
Pike	12,163	9,989	6,936	124

The complaint alleges that, since 1890, the State of Mississippi, by law, practice, custom, and usage, has maintained and promoted white political supremacy and a racially segregated society by excluding Negroes from the ballot (R. 3), and that this has been accomplished by the discriminatory use of voter qualification laws, by exclusion of Negroes from Democratic primary elections, and by the periodic tightening of registration requirements as the percentage of literate Negroes increased (R. 3–6).

Specifically, the first claim of the complaint attacks the validity of Section 244 of the Mississippi Constitution, originally adopted in 1890 and amended in 1955, and applied in one form or another by registrars throughout Mississippi for three-quarters of a century.

As amended Section 244 requires that, as a prerequisite for registration, an applicant must read, write, and give a "reasonable interpretation" of any section of the Mississippi Constitution, and demonstrate a "reasonable understanding of the duties and obligations of citizenship under a constitutional form of government" to the local county registrar on a form provided by the State Board of Election Commissioners.[1] The complaint challenges Section 244 and its implementing legislation on the following grounds:

1. Section 244 vests unlimited discretion in the registrar and, in light of its history and the setting of white political supremacy and racial segregation in which it was adopted and enforced, it is an unconstitutional device to disfranchise Negroes;

2. Section 244 imposes new and more stringent requirements for registration following a long period of racial discrimination in the registration process, and exempts from the new requirements most of the white citizens, the inevitable effect of which is to perpetuate past discrimination;

3. In a State where public educational facilities are and have been racially segregated and those for Negroes are inferior, the interpretation test—which

[1] A sample of one of the application forms in use at the time of the hearing below is attached as Appendix B, *infra*, pp. 116–120.

bears a direct relation to the quality of public education—violates the Fifteenth Amendment;

4. Section 244 is vague and provides no objective standards for its administration;

5. There is no reasonable or legitimate interest on the part of the State in requiring as a prerequisite for voting that citizens interpret certain of the legal and hypertechnical provisions of the Mississippi Constitution (R. 4–8).

The second claim attacks Section 241–A of the Mississippi Constitution, enacted in 1960, which provides that applicants for registration shall be of a good moral character. The complaint alleges that this constitutional provision and its implementing legislation are invalid because, since registration is permanent, most of the white citizens in Mississippi are exempt from their requirements. It is also alleged that the challenged provisions afford no objective criteria by which the county registrar may determine whether an applicant has good moral character and thus are so vague and indefinite as to permit registrars to reject Negro applicants arbitrarily (R. 9–13). The complaint asserts that the purpose and effect of this requirement are to provide a device by which registrars may discriminate against Negro citizens who seek to register to vote (R. 11).

The third claim attacks the validity of a Mississippi statute, also enacted in 1960 (now part of Section 3209.6, Mississippi Code, as amended), which permits registrars to destroy registration records. It is alleged that this statute conflicts with the requirements of Title III of the Civil Rights Act of 1960 (R. 15);

that its purpose and effect are to frustrate federal protection of the right to vote without distinction of race, and to facilitate discrimination by county registrars against Negroes seeking to register to vote, and that records actually have been destroyed by at least one of the defendant registrars (R. 14).

The fourth claim attacks a package of legislation adopted by the Mississippi legislature shortly after the United States Court of Appeals for the Fifth Circuit issued an injunction on April 10, 1962, forbidding one of Mississippi's voting registrars (Theron C. Lynd, registrar of Forrest County, Mississippi), from engaging in racially discriminatory practices in registration for voting. This legislative package included House Bills 900, 903, 822, and 904, which were enacted as Chapters 570–573 of the Mississippi Laws of 1962.

H.B. 900—now embodied in Mississippi Code § 3213—requires that applicants for registration fill out all blanks in an application form "properly and responsively" and without assistance. H.B. 903—now embodied in Mississippi Code § 3212.5—prevents registrars from advising a rejected applicant for registration of the reason for his rejection, on the ground that this would constitute assistance to the applicant. H.B. 822 and 904—now embodied in Mississippi Code § 3212.7 and 3217-01 through 3217-15—provide for publication of the names of applicants for registration, require an applicant to wait an extended period before he can determine whether he is registered or has been denied registration, and permit any qualified elector to challenge the qualifications of any applicant whose name is published.

The complaint alleges that House Bills 900 and 903 facilitate deprivation of the right-to-vote on account of race by establishing as grounds for disqualification any formal, technical or inconsequential error or omission by the applicant on the application form; that they vest unlimited discretion in the registrars to determine, without reference to any objective standard, whether an application form is filled out "properly and responsively"; and that the requirements which these statutes establish, including the prohibition against informing applicants of the reason for their disqualification, are arbitrary and unreasonable (R. 19–20). With respect to House Bills 822 and 904, the allegation is that they provide no objective standards for the operation of the challenge procedure, vest the registrars of voters with unlimited power to forestall the registration of qualified Negro citizens by taking the matter under advisement, are arbitrary and unreasonable, and were enacted with the purpose, and have the effect, of giving the white community of Mississippi the opportunity to harass and intimidate Negro applicants for registration whose names are publicized by operation of the statutes (R. 20–21).

All four of the statutes are further challenged on the ground that they exempt from their provisions most of the white citizens—who are presently registered to vote—and that their inevitable effect is to impose more burdensome and stringent requirements for registration on persons not registered prior to 1962. The complaint further asserts that the history of racial discrimination in Mississippi, the legislative setting

in which the statutes were enacted, the lack of objective standards, and the arbitrary character of the requirements, render them violative of 42 U.S.C. 1971 and the Fourteenth and Fifteenth Amendments (R. 21).

The complaint requested relief of various types. There was, first, a prayer for a declaration that Sections 244 and 241-A of the Mississippi Constitution, the legislation implementing both provisions, and the four 1962 statutes attacked, are violative of 42 U.S.C. 1971, Article I of the Constitution of the United States and the Fourteenth and Fifteenth Amendments; and that the statute permitting the destruction of records is in conflict with Title III of the Civil Rights Act of 1960, and, accordingly, void under the supremacy clause of the Constitution (R. 22). Second, the court was asked to find that the use of the invalid legislation has deprived Negro citizens of the right to vote on account of their race pursuant to a "pattern and practice" of racial discrimination.[2] Third, an injunction was sought restraining the defendants from "[e]nforcing and giving any further effect" to any of the challenged provisions; engaging in any act which would deprive any citizen in the State of Mississippi of the right to register and to vote without distinction of race or color, or which would delay, prevent, hinder, discourage or harass Negro citizens, on account of their race or color, from applying for registration and becoming registered

[2] This finding is sought in order to set in motion 42 U.S.C. 1971(e), added by the Civil Rights Act of 1960.

voters in Mississippi; using the application form as a test for Negro citizens, or using any interpretation or understanding test which bears a direct relationship to the quality of public education afforded Negro applicants. Fourth, the complaint specifically requested the district court to order the defendants to register as a voter any Negro applicant who (a) is a citizen not less than 21 years of age; (b) has been a resident of the State, county and election district for the period prescribed by Mississippi law; (c) is able to read; and (d) has not been convicted of any disqualifying crime (according to the Constitution and laws of Mississippi) and is not insane (R. 22–23).

In accordance with a request in the complaint (R. 21–22), a three-judge court was convened (R. 25).[3]

The defendants filed motions to dismiss on the ground that the complaint failed to state a claim upon which relief could be granted (R. 57, 61–62) and for lack of jurisdiction of the subject matter (R. 41). The State of Mississippi filed separate motions to dismiss for lack of jurisdiction (R. 43, 59–60), and for lack of capacity to sue (R. 44). The defendant registrars of voters who are nonresidents of the Southern District of Mississippi moved for change of venue (R. 45, 48, 51, 53). Each defendant registrar also moved for a severance and a separate trial (R. 40, 46, 47, 48, 49, 51, 52, 53, 55).

[3] The three judges originally designated were Circuit Judges Wisdom and Brown and District Judge Cox. Judge Wisdom subsequently asked to be relieved, and Judge Cameron was designated in his place (R. 1276).

Subsequently, on May 17, June 7, June 21, and July 9, 1963, appellees filed extensive written interrogatories pursuant to Rule 33, F.R.Civ.P. (R. 333, 353, 365, 373). Appellant filed voluminous answers on September 3, and supplements thereto on October 30, 1963 (R. 388, 1286). Among the answers to appellees' interrogatories which constitute a portion of the record on this appeal are: census and registration statistics by race in Mississippi from 1890 to 1962 (R. 388–527); historical materials which reflect the legislative purpose and setting of the challenged constitutional provisions and statutes, and the decline in Negro registration since their adoption (R. 528–624); materials detailing the various techniques by which white political supremacy has been perpetuated in Mississippi, including the use of the constitutional and statutory provisions under attack (R. 710–1275, 1286–1408); and a detailed study of the gross disparities in Mississippi's systems of public education for whites and Negroes (R. 625–709).

B. THE ANSWERS TO THE INTERROGATORIES

The answers to the interrogatories assert, or rely upon the following:[4]

1. SECTION 244, MISSISSIPPI CONSTITUTION OF 1890; SECTION 244 AS AMENDED; AND IMPLEMENTING LEGISLATION

(a) *Background and purpose of Section 244*

Between 1870 and 1892 more Negroes than white persons were eligible to vote in Mississippi because

[4] We discuss elsewhere herein (*infra*, pp. 72–73) the technical relevance of these answers to this appeal.

they constituted a majority of the population, and the suffrage provisions of the Constitution of 1869 enfranchised all adult male citizens who registered, met the residency requirements, and were not disqualified by reason of insanity, idiocy, or conviction of certain crimes.

White political domination during these years rested precariously on *ad hoc* tactics. In the words of a delegate to the Constitutional Convention of 1890:

> Sir, it is no secret that there has not been a full vote and a fair count in Mississippi since 1875—that we have been preserving the ascendancy of the white people by revolutionary methods. In plain words, we have been stuffing ballot boxes, committing perjury and here and there in the State carrying the elections by fraud and violence until the whole machinery for elections was about to rot down.[5]

Meanwhile,

> Several ineffectual efforts were made between 1876 and 1890 to have a Constitutional Convention called; these efforts failed because a majority of the white people seemed firmly convinced that a convention would be powerless to so far disfranchise the Negroes as to give the white people a majority of the electors of the state * * *.[6]

A principal purpose of the coming Convention was expressed on October 24, 1889, by United States Senator George to a gathering of his fellow Mississippians:

---

[5] Circuit Judge J. B. Chrisman, Lincoln County (R. 534–557).

[6] Judge R. H. Thompson, Lincoln and Jefferson Counties (R. 534–535, 561).

Our First Duty, Therefore,

> When we meet in convention, is to devise such measures, consistent with the Constitution of the United States, as will enable us to maintain a home government, under the control of the white people of the state.[7]

The Mississippi legislature called for the Convention by statute on February 5, 1890.[8] Seventeen days later, the man subsequently elected President of the Convention wrote:

> If [the Negro] brings his own reason to bear on his condition he must see that his future is better assured without the ballot.[9]

On July 29, 1890, the State of Mississippi, whose population was almost 58% Negro, elected 134 delegates: 133 white men and 1 Negro.[10]

The Convention opened on August 18 (R. 529–530), and from that day the records of its deliberations are replete with candid avowals of its purpose:

> Whereas the manifest intention of this convention to secure to the State of Mississippi "white supremacy" * * *.[11]
>
> * * * * * *
>
> I will agree that this is a government of the people, by the people, and for the people; but what people? When this declaration was made by our forefathers it was for the Anglo Saxon people. That is what we are here for today

[7] J. Z. George, delegate-at-large (R. 534).
[8] R. 529.
[9] Judge S. S. Calhoon, Hinds County (R. 535, 557).
[10] R. 535.
[11] R. 540.

to secure the supremacy of the white race.[12]

* * * * *

We are embarked in the same ship of white supremacy, and it is freighted with all our hopes.[13]

* * * * *

We want them [the Negroes] here, but their own good and our own demands that we shall devise some means by which they shall be practically excluded from government control.[14]

The Convention resolved that the Fifteenth Amendment should be repealed so that "such restrictions and limitations may be put upon Negro suffrage, by the several States, as may be necessary and proper for the maintenance of good and stable governments" (R. 538). Unable to change the United States Constitution, the Convention adopted Section 244 of the Mississippi Constitution of 1890, which, as amended, is challenged in the first claim of the complaint. In its original form, it required that an applicant for registration read any section of the State Constitution, *or* understand it when read to him, *or* give a reasonable interpretation of it.

Some of the delegates viewed the measure as penalizing supposed Negro characteristics:

The fifteenth amendment to the Federal Constitution was not violated by our State Constitution in the enactment of which we only circumvented by Anglo-Saxon ingenuity. There is not a word in the constitution of 1890

[12] J. H. McGehee, Franklin County (R. 540, 559).
[13] Thomas P. Bell, Kemper County (R. 541, 557).
[14] Judge S. S. Calhoon, Hinds County (R. 542, 557).

> which discriminated against the colored people; race characteristics alone can be said to have been causes of disfranchisement.[15]

Others expected discriminatory manipulation of the test to disfranchise Negroes:

> * * * I fear sir, it will lead to trickery and fraud.
>
> * * * * *
>
> Adopt this qualification and it places in the hands of the officer who is to apply the test the power to defraud and disfranchise.[16]

The expectation was particularized by a member of the Convention. On September 11, 1890, the Jackson, Mississippi *Clarion-Ledger* reported that Judge Chrisman from Lincoln County stated (R. 544):

> It looks as if it was intended that if a register [sic] wanted the man to vote he would read him some such clause as Slavery except as a punishment for crime should be forever prohibited. "Do you understand this?" "Oh yes." But if he did not want him to vote he would read him the interstate clause or the section forbidding the Legislature to pass *ex post facto* laws and demand a construction.

In a retrospective evaluation of this requirement, among others, a member of the Convention's Franchise Committee wrote in 1902:

> These several suffrage requirements combined were deemed sufficient for the end in view, as they have so proved in even the blackest parts of the State. They have, as

---

[15] Judge R. H. Thompson, Lincoln and Jefferson Counties (R. 548).

[16] R. 543.

> they were intended, reduced the negro majorities to a negligible political quantity.[17]

In 1890, more than 55% of the eligible voters were Negro (R. 531). By 1899, when Negroes constituted 57% of the adult population, their number of registrants had fallen below 10% of the electorate (R. 389). By 1903 a leading newspaper could say:

> The probable total registration of the state today including those who had registered for the August primary is in the neighborhood of 100,000 of which none exceeding 20,000 are colored. Despite the oft-expressed fear that the Negro is trying to get back into politics no information of this kind is shown on the registration book, a very small number qualifying for citizenship who are really entitled to do so. County registrars have kept the Negroes off the books by strict enforcement of the understanding clause in the Constitution.[18]

Similarly, although illiteracy among Negroes declined substantially from 1899 to 1952, and although the number of Negroes has never fallen below 40% of the State's adult population, registration among eligible Negroes has declined to its present level of about 1 in 20. Registration among white adults, on the other hand, has remained at 60 to 75%.[19]

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[17] R. 553.

[18] *Clarion-Ledger*, Jackson, July 16, 1903 (R. 596).

[19] R. 4, 6.

(b) Unconstitutional use of Section 244

United States Senator Bilbo summed up the role of Section 244 in 1946:

> The poll tax won't keep 'em from voting. What keeps 'em from voting is section 244 of the constitution of 1890, that Senator George wrote. It says that a man to register must be able to read and explain the Constitution when read to him * * *. And then Senator George wrote a constitution that damn few white men and no niggers at all can explain * * *.[20]

Just as Section 244's discriminatory purpose is seen in its history, its racial effect is clear from its use by county registrars, two of whom told a Special Committee of the United States Senate in 1946:

> The CHAIRMAN. What other restrictions did you place on the colored applying to register, in contrast to the whites, other than the requirement as to the production of the poll-tax receipt?
>
> Mr. FIELD. The only other thing I did was to ask them to read the section of the constitution of the State of Mississippi where it explains the election of the Governor of the State of Mississippi. I did not require that of the whites, but I did require it of the colored.
>
> The CHAIRMAN. Why did you make the exception?
>
> Mr. FIELD. I didn't require it, that is, I have no other reason than that they were colored.[21]
>
> * * * * *
>
> Mr. WYMAN (Counsel for the Committee). Did you ask any of these individuals (Negroes)

[20] R. 596.

[21] R. 589.

whether they could read, prior to the time you questioned them?

Mr. COCKE. I did.

Mr. WYMAN. And did they satisfy the requirements of being able to read?

Mr. COCKE. They said that they could.

Mr. WYMAN. But after that you questioned them?

Mr. COCKE. I did.

Mr. WYMAN. Do you remember, Mr. Cocke, ever having made a statement that no matter how they answered these questions, that they were disqualified?

Mr. COCKE. I think I told them in short words that they would have a hard time convincing me, I believe I made that statement.[22]

During the first half of this century, then, white political supremacy was brought about and maintained in Mississippi by intentionally discriminatory registration standards and procedures, the white primary, outright refusals to process Negro applicants, intimidation at the polling place and in the registrar's office, and refusals to accept poll tax payments.[23]

(c) Background of amended Section 244 and implementing legislation

This Court sounded the death knell of the white primary in 1944.[24] And in June of 1951, the United States Court of Appeals for the Fifth Circuit questioned the practice of requiring literate applicants

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[22] R. 590.

[23] Disfranchisement of Negroes to 1955 by the use of Section 244 and other discriminatory devices is detailed at R. 563–592. And see the dissenting opinion below at R. 1565, 1591–1603.

[24] *Smith* v. *Allwright*, 321 U.S. 649.

also to interpret a section of the Constitution (apparently in plain violation of the Mississippi law) and enjoined any discrimination as between white and Negro applicants in this respect.[25]

Since the vast majority of Mississippi's Negroes were literate in 1952, the legislature proposed at once that Section 244 be amended to require that applicants be literate *and* able to interpret any section of the Constitution. The proposed constitutional amendment required an affirmative vote by the electorate and it did not carry in the November 1952 general election.[26]

When the legislature met next, in 1954, it adopted another resolution to amend Section 244.[27] In addition to the requirements that an applicant be literate and able to interpret a section of the Constitution, this proposal required that he be able to demonstrate to the registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government and that he execute a sworn written application for registration on a form to be prescribed by the State Board of Election Commissioners. This resolution, dated April 24, 1954, exempted from the new requirements all persons registered before January 1, 1954, *i.e.*, about one-twentieth of the eligible Negroes and roughly two-thirds of the adult white population.

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[25] *Peay* v. *Cox*, 190 F. 2d 123 (C.A. 5), certiorari denied, 342 U.S. 896.

[26] R. 597.

[27] Mississippi Laws, 1954, ch. 427 (R. 597–598).

As election day neared, the amendment was explained to Mississippi's voters and they were exhorted to adopt it:

> The amendment is intended solely to limit Negro registration.[28]

As a Mississippi newspaper explained on election day:

> And the second [the proposed amendment to Section 244] tightened up voting requirements and discouraged if not prevented further qualification of negroes for voting.[29]

The amendment was adopted on November 2, 1954. Post-election newspaper comment was as follows:

> Slowly mounting returns today gave a 19 to 1 lead to a proposed amendment to restrict negro voting in Mississippi.[30]
>
> * * * * *
>
> With 347 precincts reporting the vote was 17,317 for the amendment to change the laws for qualification of voters to provide for reading and interpreting the state constitution as a requirement for the new registrants the amendment [sic] is plainly aimed at negro voters and the provisions would not apply to those already qualified.[31]

In January, 1955, an extraordinary session of the legislature inserted the amendment in the Constitution, adopted implementing legislation and authorized

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[28] Robert Patterson, Chairman of the Association of Citizens' Councils of Mississippi (R. 602).

[29] *Clarion-Ledger*, Jackson, November 2, 1954 (R. 603).

[30] *Meridian Star*, Meridian, November 3, 1954 (R. 604).

[31] *Clarion-Ledger*, Jackson, November 3, 1954 (R. 604).

the State Board of Election Commissioners to prepare application forms.

(*d*) *Discriminatory use of amended Section 244 and implementing legislation*

The answers show a consistent pattern of discrimination in the selecting of test sections to be interpreted. In Leake County, for example, between January 2, 1960 and September 5, 1961, there were forty-six white applicants for registration and eleven Negro applicants. Thirty-six of the whites, but only one Negro received the one-line section 240. None of the whites, but ten of the eleven Negroes received the lengthy section 241 (R. 1007). Similarly, in Copiah County, from the period February 15, 1960, to January 3, 1963, the short section 30 ("There shall be no imprisonment for debt") was assigned to 388 of the 528 white applicants, but to none of the thirteen Negro applicants (R. 965–966). In Rankin County from January 1957 to August 1963, 97% of the 4,199 white applicants received one of the following three sections:

> *Section 207.* Separate schools shall be maintained for children of the white and colored races.
>
> *Section 101.* The seat of government of the state shall be at the city of Jackson and shall not be removed or relocated without the assent of a majority of the electors of the state.
>
> *Section 11.* The right of the people peaceably to assemble and petition the government on any subject shall not be impaired.

Only 16% of the Negro applicants received one of

the above sections, while 84% of the Negro applicants were given sections of far greater length and complexity, including sections concerning the removal of judges for reasonable cause on grounds insufficient for impeachment (§ 53), the appropriation of educational funds and the support of sectarian schools (§ 208), the fictitious issue or increase of stock of transportation carriers (§ 196), the exercise of the right of eminent domain (§ 190), and treason against the State (§ 10). No white applicant received any of these sections (R. 1369–1370). Comparable examples in other counties of discrimination in the choice of sections for interpretation are found elsewhere in the Record (R. 775–776; 821–823; 884; 932–933; 1053; 1055; 1231–1233; 1264–1266; 1301).

The answers to the interrogatories show that Mississippi registrars have not only discriminated racially in the selection of sections for interpretation, but also in the grading of the interpretations. For instance, a Negro in Hinds County, given Section 20 to interpret, was told by the deputy registrar that he "missed it by one word" (R. 991). In Madison County a Negro was advised that her interpretation was "too far-fetched" (R. 1024). In Jefferson Davis County, the registrar told one Negro that his interpretation "wasn't quite right" (R. 1159). Another Negro in that County was told that her interpretation was "not full enough" (R. 1164). Similarly, a Negro in Madison County was informed that she had not written enough on the interpretation, that the registrar "wanted an essay" (R. 1023). On the other hand, a Negro in Pike County, having inter-

preted a constitutional section, was rejected because she "had not condensed it enough" (R. 1359).

The registrars have not been so fastidious in the grading of interpretations submitted by white applicants. In George County, white applicant John Cecil McMillan, asked to interpret section 30, providing "There shall be no imprisonment for debt," gave the following interpretation (R. 1272): "I thank that a Neorger should have 2 years in collage before voting because he don't understand." He was registered (R. 1272). White applicant Ernestine Williams, who also was registered, gave this interpretation of section 30:

> There shall be no imprisonment for death is what section 30 means to me (R. 1274).

Again, in Jefferson Davis County, white applicant Jeffie Garner Smith—registered on July 7, 1956—was asked to interpret section 30. His interpretation was:

> Without due process of time and law (R. 1202).[32]

Similarly, in explaining the duties and obligations of citizenship under a constitutional form of government, a white accepted applicant in Tallahatchie County wrote

> Yes I fully understand the duties and obligations of citizenship under a constitutional form of government (R. 1330).

Yet, between March 24, 1955, and June 1962, more than 300 applications filed in 15 counties by Negroes—many with college training and some with

[32] Many other examples are cited in the answers to interrogatories. See R. 780–781; 800–803; 939–945; 985; 1223; 1272–1274; 1308–1310; 1316–1320.

graduate degrees—were rejected because, in the judgment of the registrar, the applicant had failed to give a reasonable interpretation of the constitutional section assigned to him, or demonstrate a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government, or both.[33]

(e) *Disparity of educational systems for Negroes and whites*

Public education for Negroes in Mississippi has at no time approached that afforded white persons. As Mississippi's Governor White conceded in a message to the Mississippi legislature in 1953, "there is a wide variation in educational opportunities between the races" (R. 649). Other state officials also have recognized the disparity (R. 647–648), as have the biennial reports transmitted to the Mississippi legislature by the State Superintendent of Public Education (R. 649–657) and studies authorized by the Mississippi legislature, the State Superintendent of Public Schools, and other public educational authorities in Mississippi (R. 657–697).

Thus, official reports of public officials and public agencies in Mississippi reflect that, in a public school system which rigidly has segregated teachers as well as pupils, white teachers are more highly

[33] In many counties, there is massive evidence of assistance given to whites, but not to Negroes on the interpretation and citizenship tests (R. 796–800; 813–814; 824–848; 864–866; 887–906; 919–920; 935–938; 967–986; 1007–1019; 1038–1043; 1055–1074; 1078–1085; 1137–1138; 1142–1150; 1199–1201; 1203–1222; 1234–1252; 1301–1307; 1314–1316; 1323–1336; 1344–1348; 1353–1358; 1362–1364; 1372–1374; 1376–1388; 1390; 1393–1407)—in other words, that the tests were "tests" for Negroes but not for whites.

trained [34] and better paid [35] than Negro teachers. The State spends more money for the instruction of white children.[36] Although in 1910 Mississippi decided that consolidation of small rural schools would provide better education for children (R. 639), real consolidation of Negro schools did not begin until after this Court's decision in *Brown* v. *Board of Education,* 347 U.S. 483—40 years after consolidation of white schools (R. 640). The plight of rural Negro schools was described in a 1933–1935 report issued by the State Superintendent of Public Schools (R. 652):

> In hundreds of rural [Negro] schools there are just four blank, unpainted walls, a few old rickety benches, an old stove propped up on

[34] For example, in 1961–1962, there were 2,473 white teachers with graduate degrees in the public school system (out of a total of 11,058), but only 553 Negro teachers with graduate degrees (out of a total of 7,382) (R. 628).

[35] In 1941–1942 the average yearly salary of white teachers more than tripled that of Negro teachers. In 1961–1962, white teachers, on the average, still received over $500 more per year than Negro teachers (R. 629).

[36] In 1929–1930, the State spent almost six times as much per white child as per Negro child. Even in 1960–1961, the state spent $173.42 per white child, but only $117.10 per Negro child (R. 631). See, also, R. 635–638. In 1931, teachers in Negro schools frequently had in their charge from seventy-five to one hundred and fifty pupils (R. 651). In his report for 1943–1945, the State Superintendent stated that nearly half of the 3,345 Negro public schools were schools in which "the equipment is nil" (R. 654). During the 1961–1962 school year, 150 school districts throughout the state spent an average of $80 per capita above the state minimum for the education of their white children, but an average of $19.50 per capita above the same state minimum for Negroes—a difference of more than 75% (R. 632–634).

> brickbats, and two or three boards nailed together and painted black for a blackboard. In many cases, this constitutes the sum total of the furniture and teaching equipment.

Although the number of Negroes of school age always has exceeded the number of whites (R. 627), at all times more white high schools have been accredited than Negro high schools, both by the State of Mississippi [37] and by regional accrediting associations.[38] The deficiencies in Negro elementary schools are reflected in a similar relative lack of accreditation.[39]

The higher education provided to Negroes by Mississippi also has been substantially inferior to that afforded whites. For example, a much wider variety of courses are offered to white than to Negro college students in Mississippi (R. 645). A survey report authorized by Mississippi authorities in 1954 declared that (R. 658):

> The State provides, through the University of Mississippi and other state colleges, ample opportunities for white students to pursue graduate and professional study; but the Negro student has been compelled to go outside the State for this service.

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[37] In 1959–60, there were 404 white, but only 176 Negro, high schools accredited by the State of Mississippi (R. 642).

[38] In 1959–60, there were 96 white, but only 7 Negro, high schools accredited by regional accrediting associations (R. 642).

[39] In 1960–61, 96.9% of the white, but only 44.3% of the Negro, elementary schools were accredited by the State of Mississippi. Similarly, while 26.7% of the white elementary schools were regionally accredited, only 10.3% of the Negro elementary schools had received regional accreditation (R. 643).

Similarly, a 1961 report of another study authorized by the State of Mississippi stated (R. 660):

> * * * With the exception of the work towards a Master's degree for principals and supervisors at Jackson State College, no graduate work is at present available to Negro students within the State (R. 660).

2. SECTION 241–A MISSISSIPPI CONSTITUTION; IMPLEMENTING LEGISLATION

Prior to 1960, Section 241 of the Mississippi Constitution, as implemented by Sections 3214 and 3235 of the Mississippi Code (1942), provided that persons convicted of certain felonies could not become or remain registered, or vote.

During the 1960 legislative session, bills were introduced to require that electors be of good moral character.[40] On May 5, the legislature approved a constitutional amendment to that effect which, after adoption by the voters on November 8, 1960, became Section 241–A of the Mississippi Constitution.[41]

Legislation implementing this amendment—detailed *infra*, pp. 29–30—also was enacted during May, 1962.

3. RECORDS DESTRUCTION STATUTE

Prior to 1960, Mississippi law provided that application forms and other registration paraphernalia should "* * * remain a permanent public record" (amended Section 3209.6, Mississippi Code (1942))

[40] A study of the Legislature's preoccupation with racial legislation appears at R. 607–611.

[41] R. 610.

and "* * * be carefully preserved by the county registrar" (amended Section 3209.7).

During the late winter and spring of 1960, the United States Congress debated the legislation that was to be approved on May 6 as the Civil Rights Act of 1960. Title III of that Act requires local officials to keep and make available to the Attorney General records relating to the eligibility of persons for voting in federal elections.[42]

The Mississippi legislature condemned the "vicious so-called Civil Rights Bills" by joint resolution on March 3, 1960.[43] Three weeks later, a bill specifically authorizing the destruction of registration records was introduced, and, on March 28, three constitutional amendments designed to eliminate written applications for registration were presented.[44] On April 13, W. F. Minor wrote in the New Orleans *Times-Picayune*:

> * * * the Mississippi Senate moved Tuesday to permit voter registrars to destroy records of rejected Negro voter applications.
>
> * * * *
>
> Explanation of the purpose of the bill was made while the Senate was still in an executive session called to confirm several gubernatorial appointments.
>
> But one senator said later, "If this bill is going to have any effect, it must be passed before the President signs the Civil Rights Bill."[45]

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[42] 42 U.S.C. (Supp. V) 1974–1974b.
[43] R. 14, 608.
[44] R. 608, 609.
[45] R. 612–613.

Senate Bill No. 1883, approved April 15, 1960, added provisions permitting the destruction of records to Sections 3209.6 and 3209.7 of the Code. Pursuant to it, records required to be preserved by Title III of the Federal Act have been destroyed by one of the defendant registrars (R. 14–15).

4. THE "PERFECT FORM" REQUIREMENT

(a) *Background and legislative purpose*

Section 3213, Mississippi Code (1942), as amended in 1955, has been the principal statutory implementation of Section 244 of the Mississippi Constitution. From 1955 to 1962, it required applicants for registration to read and write any section of the constitution and interpret it reasonably to the registrar, to demonstrate a reasonable understanding of the duties and obligations of citizenship, and to fill out an application form unaided.

As noted above, the complaint asserts that the form embodying these requirements, prepared by the defendant State Election Commissioners and used by the defendant registrars, has been the vehicle of gross racial discrimination. It is alleged that white applicants throughout Mississippi have been registered without forms or with error-ridden forms and that many have received unlimited help with the forms. Negro applicants, however, have uniformly worked unaided and have been rejected for trivial errors and omissions which do not bear on their substantive qualifications as voters.[46]

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[46] See generally R. 710–1275, 1286–1408.

Litigation by the United States against these practices in various counties first bore fruit on April 10, 1962, when a temporary injunction was granted by the Court of Appeals for the Fifth Circuit in a widely publicized case against the registrar of Forrest County.[47] The court found that, while white applicants were being registered without forms, with woefully defective forms, and with help on forms, well qualified Negroes were being rejected because of picayune errors on comparatively better forms, which they had filled out unaided. Moreover, they were not advised of the reasons for their rejections and arbitrarily were required to wait for six months before reapplying.

The court ordered the registrar to cease discriminating and specifically: (1) to assist Negro applicants in the same measure as whites; (2) to ignore insignificant errors and omissions on Negroes' forms and permit applicants to correct such trivia when called to their attention; and (3) to abandon the unauthorized six-month waiting period between applications.

The Legislature reacted promptly. On April 17, 1962, bills were introduced providing: (1) implementation of the good moral character criterion already announced in Section 241–A of the Constitution; (2) a strengthening of the existing requirement that applicants execute a letter-perfect form wholly without assistance; (3) a requirement that the names of applicants for registration be published and an invitation to voters to challenge the qualifications of appli-

[47] *United States* v. *Lynd*, 301 F. 2d 818 (C.A. 5), certiorari denied, 371 U.S. 893.

cants; (4) a direction to the registrars not to advise rejected applicants of the reasons for their rejection (except as to those rejected on account of bad moral character), as that would constitute illegal help; and (5) an express requirement (not enacted) that rejected applicants wait six months before trying again.[48]

The perfect form and good moral character requirements became parts of amended Section 3213 via House Bill 900, approved on May 23, 1962. Section 3212.5 (House Bill 903, also approved on May 23, 1962) was added to the Code to direct registrars to mark rejected forms so as to conceal from reapplying applicants the reasons for the initial rejections:[49]

(*b*) *Discriminatory use of "perfect form" requirement.*

The application form, augmented by the requirement of perfect execution, has been widely used to thwart Negroes' attempts to register. In 8 counties, 173 Negroes were rejected explicitly because of the "perfect form" requirement. In one county, 5 Negroes were rejected for failing to place their names at a certain line of the form; 94% of the accepted white persons in that county had been guilty of the same omission. In another county, about 1500 white persons registered without filling out forms or even going to the registrar's office, and in 3 others 341

[48] R. 620–622.

[49] The sworn written applications for registration prepared by the defendant members of the State Board of Election Commissioners pursuant to the new requirements (Section 3209.6, as amended by House Bill 905, approved May 26, 1962) contain designated spaces for moral character data and simple "Passed" and "Failed" spaces. See *infra*, p. 120.

white persons' applications were executed, wholly or in part, by someone other than the applicant. Registrars and registrants have testified to assistance furnished to white applicants in cases tried to date in 9 counties. Indeed, 76 patterns of substantially identical answers appear on white persons' forms in 27 counties. In 4 counties in which law suits have been filed under 42 U.S.C. 1971(c), it was proved that more than 50 white persons who are functionally illiterate have been registered since the form was instituted.[30] In all of these counties, Negroes were required to satisfy all of the requirements of State law as a prerequisite to registration.

5. THE "PUBLICATION" PROVISIONS

Section 3212.7 of the Mississippi Code requires that, within 10 days after application to register is made and before consideration is given to the sufficiency of the application, the name and address of the applicant must be published in a local newspaper. The information must appear once a week for two weeks, under a heading "Applicants for registration to vote." Ostensibly, the purpose of this statute is to give any qualified voter of the county the opportunity to challenge "the good moral character * * * and any other requirement of any applicant to vote." Sections 3217-01-3217-15 of the Code fix the period during which such challenges may be made and the procedures—including an elaborate hearing procedure—to be followed upon a challenge. If no challenge is made during the prescribed four-week period, the registrar

[30] These uses of the new requirements are detailed at R. 771-1075 by county.

is directed to determine within a reasonable time whether the applicant is qualified to vote.

The practical effect of requiring publication of the names of applicants is dramatically illustrated by the recital in the answers to appellees' interrogatories of incident upon incident of intimidation of Negroes in connection with their attempts to exercise the right to vote. The following are representative examples:

a. Negro residents of Yazoo County were deterred from voting on twenty-six different occasions by threats or fears of economic reprisal[51] (R. 947–954).

b. At least three serious incidents of intimidation have occurred in Amite County[52] (R. 954–956).

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[51] For example, one Negro was threatened by a white man at the polls, and then visited the following night by five white men who suggested that he remove his name from the voting lists. Another white man removed his leased gas tank from the Negro's property (R. 948). Another Negro was fired from his job when he registered and was reemployed when he removed his name from the rolls (R. 947). In nine other cases Negroes were told they would lose credit or other financial aid, or could not get their cotton ginned, if they remained registered. Six others heard of these incidents and had their names removed. Three removed their names because they feared they would lose their jobs.

[52] On one occasion, two Negroes were walking to the courthouse to vote, accompanied by voter registration worker Robert Moses. They were stopped on the street and Moses was badly beaten. The other two decided not to register (R. 955). On another occasion, when Moses accompanied three Negroes to the registrar's office he was arrested and fined for impeding an officer in the course of his duties (R. 954–955). A third incident in Amite County occurred when a voter worker who accompanied three applicants to the courthouse was beaten up before a crowd of white men on the lawn behind the courthouse. The Negroes filling out forms heard the beating and could see the crowd through the window. They left without completing their forms (R. 956).

c. A Negro woman in George County who attempted to register was told by the registrar that Negroes who worked for white persons and who belong to the NAACP would lose their jobs if they tried to vote (R. 1262).

d. In Issaquena County, Negroes who sought to pay their poll taxes were told by the sheriff that their attempt to do so would result in cancellation of plans for building and repairing roads in their neighborhood (R. 926).

e. In Leflore County, Negroes who attempted to register to vote were visited by white men shortly after the attempt and told not to return to the registrar's office (R. 816).

f. A Negro in Montgomery County, who had a daughter teaching in the school system, was informed by the principal that his effort to pay his poll tax might affect his daughter's job status (R. 875).

g. An effigy in woman's clothes was burned before the home of a woman applicant in Tallahatchie County after her name and address had appeared in the paper in connection with her application to vote (R. 811).

C. THE DECISION BELOW

On March 6, 1964, the district court (Circuit Judge Brown dissenting) dismissed the complaint in its entirety for failure to state a claim upon which relief could be granted. In granting the motion of the State of Mississippi to dismiss (R. 1532), the majority found "substantial" the State's contention that Congress may not constitutionally implement the Fourteenth or Fifteenth Amendments by legislation directed "to the sovereign entity of the state

itself" (R. 1518), but actually rested its ruling on a construction of the statute authorizing joinder of the State (section 601(b) of the Civil Rights Act of 1960, 42 U.S.C. (Supp. V) 1971(c)) which, the court held, does not permit suit against the State where there are functioning registrars (R. 1532).

The court next granted the motion of members of the State Board of Election Commissioners to dismiss, holding that they are neither indispensable, necessary nor proper parties, because "they are not charged with enforcing or threatening to enforce any of the statutes under attack" (R. 1533; 1534).[53] As to the six county registrars named as defendants, the court held that in the absence of a charge of joint wrongdoing, it could "find no authority to continue the suit against them as a joint cause of action" (R. 1535).[54]

As an independent ground for dismissal as to all defendants, the court held further that the United States lacked standing to maintain this action because

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[53] The court suggested that this was true of the State as well (R. 1530).

[54] The court further stated (1) that if the United States intended by its complaint to state a cause of action based on a pattern and practice of individual racial discrimination by the registrars, "such causes of action would be justiciable solely before a single district judge" (R. 1536); (2) that venue lay only over the claims asserted against two of the defendant registrars, *i.e.*, those who resided in the Jackson Division of the Southern District of Mississippi, and (3) that the acts of the several registrars could not "be pooled in determining whether there has been a pattern or practice under the terms of the statute" (R. 1536).

42 U.S.C. 1971, in its view, does not authorize the government to bring an action attacking State constitutional provisions or laws.[55] To construe Section 1971 to authorize "a direct attack" by the United States on the voter qualification laws of an "Indestructible State" would be "a doubtful constitutional construction," said the court, for the field of voter qualification is "committed exclusively to * * * [the States] by the Constitution * * *" (R. 1540).

Proceeding to consider, "[a]t the risk of tedium," the challenged constitutional and statutory provisions, the court sustained each of them (R. 1544). It first declared, as "basic principles", that (1) legislative history or background cannot be considered when the words of a statute are plain and unambiguous, and, accordingly, the constitutional status of the provisions attacked "cannot be changed by delving into supposed legislative intent, history or purpose", and (2) "the method of application or administration of the statutes cannot affect the validity or invalidity of the statutes themselves" (R. 1546).

Taking up each provision in turn, the court adopted, with respect to Section 244, Sections I and II of an earlier opinion in *Darby* v. *Daniel*, 168 F. Supp. 170 (S.D. Miss.), which had rejected an attack on Section 244 in a class action by a Mississippi Negro. Reliance also was placed upon this Court's decision in *Lassiter* v. *Northampton Election Board*, 360 U.S. 45, upholding a North Carolina literacy test (R. 1547-1548), and a decision of the Court of Appeals for the

[55] The court also suggested that it lacked statutory jurisdiction (R. 1536).

Fifth Circuit in *Trudeau* v. *Barnes,* 65 F. 2d 563 (C.A. 5), certiorari denied, 290 U.S. 659, upholding the Louisiana "interpretation test" (R. 1548). Distinguishing the recent contrary decision of the three-judge district court in *United States* v. *State of Louisiana,* 225 F. Supp. 353 (E.D. La.), appeal pending, No. 67, this Term, the majority emphasized Mississippi's written application form and what it characterized as the "simple" and "cheap" administrative procedure for reviewing decisions of the registrar via appeal to the County Election Commission (R. 1549–1551).

In defense of Section 241–A of the Mississippi Constitution, the court noted that good moral character is a prerequisite to naturalization, to admission to practice before the bar of this Court and other federal courts, and, in Mississippi and elsewhere, to obtaining a license for the practice of various professions ranging from operation of a barbershop to the practice of medicine, as well as a qualification for voting in Alabama, Georgia, Louisiana, and Connecticut (R. 1553–1554). "Good moral character" seemed to the majority below a "self-defining", "concise and meaningful description of an attribute of a desirable citizen", "calculated to improve the quality of the electorate * * *" (R. 1554–1555).

The court turned next to Section 3209.6 of Mississippi Code (the records destruction statute) and held that, since the provision is permissive only, it is not in conflict with Title III of the Civil Rights Act of 1960 (42 U.S.C. 1974). The court likewise disagreed with the government's contention that Sections 3213 (the "perfect form" requirement) and 3212.5 (impos-

ing upon the applicant the responsibility to return to the registrar's office to determine whether he has passed or failed and prohibiting registrars from advising rejected applicants of the reason for their rejection) facilitate racial discrimination by establishing formal, technical or inconsequential errors or omissions on the application form as grounds for disqualification (R. 1557), and constitute an arbitrary restriction on the franchise (R. 1558). The court said that "If it is an exacting examination, which we do not determine it to be, it is one which the statute requires to be administered without regard to race, creed or color," and that it was "beyond the jurisdiction of this court to question" (R. 1559). The court thought the requirement that each blank in the form and oath be filled out "properly and responsively" establishes "a definite enough standard for intelligent and consistent application", and added that, even if it does "operate to 'trip' applicants into a disqualifying omission", the form operates indiscriminately without regard to race (R. 1559).

The court upheld on similar grounds the statutes requiring publication of the names of applicants, and authorizing qualified voters to challenge the qualifications of persons whose names are so published. The majority thought it a full answer to the claim that these provisions invite white citizens to harass Negroes that they also "vest power and authority in Negro citizens to harass whites, in Negro citizens to harass Negroes, and in white citizens to harrass whites," and that "[t]he choice as to whether to exercise the power * * * is one of purely private decision

not subject to the mandates of the Fourteenth or Fifteenth Amendments" (R. 1560).

Finally, the court found unjustified the request that appellees be required to register Negro applicants who satisfy the age and residence requirements, can read, have not been convicted of a disqualifying crime, and are not insane (R. 1563).

Judge Cox, in a separate concurring opinion (R. 1611), expressed his "unconditional" agreement with the views of the majority opinion, in which he joined.

In the view of Circuit Judge Brown, in dissent (R. 1566):

> The decisive question is, therefore, whether the United States may maintain this suit and whether it may be maintained against the State of Mississippi. Once that is decided, nearly everything falls into place, or becomes a matter of superficial consequence. [Footnote omitted.]

Judge Brown found authority to sue under both 42 U.S.C. 1971(c) and (d) and the broad prerogative of the national sovereign (R. 1567–1571). He regarded as anomalous the doctrine that wholesale disfranchisement is immune from redress while "little wrongs" are not (R. 1568). The dissent further held that the State is amenable to suit (1) because of the express language of subsection (c) and (2) because the actions challenged are, in fact, those of the State. Judge Brown concluded that the complaint amply states a claim, and that the answers to appellees' interrogatories demonstrated "that the Government has at least an arguable basis for establishing its claim on a trial" (R. 1582).

SUMMARY OF ARGUMENT

I

The majority below erred in holding that the United States is not authorized to bring an action which challenges the validity of State constitutional and statutory provisions alleged to disfranchise Negroes on account of their race.

A. Section 1971(a) explicitly secures, to all citizens otherwise qualified by law, the right to vote without distinction of race or color, "any constitution, law, custom, usage, or regulation of any State * * * to the contrary notwithstanding." The "law" under which the citizen must be "otherwise qualified" does not include a provision invalidated by the Fifteen Amendment. The legislative history of Section 1971(a) shows that it is a statutory recital of the rights guaranteed by the Fifteenth Amendment. Like the Fifteenth Amendment, it reaches all acts which deny or abridge the right to vote on account of race, whether they are done pursuant to unconstitutional laws or constitute illegal practices adopted by State officials in administering valid voting laws.

B. Section 1971(c)—added by the Civil Rights Act of 1957—authorizes a suit by the United States to enjoin every "act" engaged in by any "person" which abridges a "right or privilege" secured by Section 1971(a). It makes no distinction between an act *proscribed* by, and an act *dictated* by, State law. And since State officials are "persons," when they apply laws which disfranchise Negroes on account of their race, they "engage in [a prohibited] act or prac-

tice." The legislative history of Section 1971(c) reflects a congressional intent to reach any kind of activity aimed at disfranchising citizens on account of their race, including conduct directly commanded by State laws.

II

The majority below also erred in holding that the State of Mississippi is not a proper party.

A. Section 601(b) of the Civil Rights Act of 1960 (now incorporated in 42 U.S.C. 1971(c)) confirms the right of the United States to sue the State. It does not confine that authority to the case in which registrars are unavailable as defendants, but expressly permits *joinder* of the State. This reading is confirmed by the legislative history and the uniform rulings of all courts (other than the court below and one subsequent ruling) which have had occasion to consider the question.

B. There is, in the present context, no constitutional obstacle to joining the State itself as a party defendant. Here, as in the Fifteenth Amendment, "State" is a short-hand for the several agents of the State government. There is thus no conflict with the theory of the cases construing the Fourteenth and Fifteenth Amendments in the light of the bar imposed by the Eleventh. In any event, since the United States is the plaintiff, sovereign immunity concepts are inapplicable.

C. Joinder of the State is wholly appropriate here. Because the suit involves the validity of State laws, and because the relief sought is statewide and must bind all the agencies of the State, it is fitting and

necessary that the State itself be the principal defendant.

III

The majority below also erroneously ruled that the members of the State Board of Election Commissioners were improper parties and that the individual registrars were not properly joined.

A. It is the duty of the Board to prepare application forms "designed to exhibit the essential facts and qualifications necessary to show that [an applicant] is entitled to register and vote," including those here attacked. The complaint appropriately seeks relief enjoining the members of the Board from giving any further effect to the provisions challenged in this suit, and such an injunction properly would require them to omit from the forms questions designed to exhibit the qualifications sought to be nullified by t' court's decree. This would facilitate compliance the registrars with the decree and eliminate any ossibility of conflict between the decree and directives of the Board (which has the power to remove a registrar if he is an "improper person").

B. Joinder of the six registrars as defendants was proper. The two requirements of the joinder rule (Rule 20(a), F. R. Civ. P.) are satisfied here. First, questions of law common to all the registrars will arise in the action because it is claimed that each registrar is administering, in common with the others, a particular set of unconstitutional laws. Second, there is asserted against the defendants a "right to relief * * * in respect of or arising out of the same transaction, occurrence, or series of transactions or

occurrences," whether the "transaction" or "occurrence" is viewed as the legislative transaction or occurrence involved in the enactment of an unconstitutional law, or the implementation by each defendant of the challenged laws. It obviously would be wasteful of the time and energy of the courts and of counsel not to join the six registrars in a single action. Since joinder was permissible, venue was proper as to each of the registrars.

IV

The majority below further erred in dismissing the complaint for failure to state a claim. The allegations, if proved—as the answers to interrogatories forcefully suggested they could be—amply state a cause of action with respect to the several challenged State registration provisions, which, of course, are not insulated from the claim that they abridge Fifteenth Amendment rights.

A. The charge here is that a specific constitutional right—the franchise on which the security of other basic rights depends—has been grossly abridged on grounds of race. Tested by applicable standards, the laws challenged here are unconstitutional. It is alalleged that they are part of a scheme or system of laws calculated to disfranchise the Negro and have achieved that objective. But, even apart from their purpose, most of the provisions here attacked—because of the lack of adequate standards and the uncontrolled discretion they vest in local registrars—offend constitutional limitations; they are potential instruments for discrimination. Moreover, it is al-

leged that the potentiality can be proved and that the statutes may be judged in the light of the gloss which the consistent and generalized discrimination practiced under them have affixed to the text.

Finally, two of the Mississippi statutes plainly conflict with recent congressional enactments, and another of them—by requiring publication of the names of applicants for registration and inviting challenges to their qualifications by other voters—directly inhibits applications by Negroes. In sum, the complaint fully states a cause of action.

B. If the allegations of the complaint are sustained, the government will clearly be entitled to substantial relief. Not only should enforcement of the unconstitutional laws be enjoined throughout the State, but it would be appropriate—and plainly within the judicial power—to enjoin the application of any new and more stringent standards to Negroes so long as there remain voters who have not been required to meet any but the most basic requirements. And it will be proper, if the claim is proved, to enter a finding that discrimination has amounted to a "pattern or practice," thus making available the special relief authorized by the Civil Rights Act of 1960.

ARGUMENT

I

THE UNITED STATES IS AUTHORIZED TO CHALLENGE CONDUCT ENGAGED IN PURSUANT TO RACIALLY DISCRIMANATORY STATE VOTING LAWS

The Attorney General is expressly authorized to institute "in the name of the United States" a proceed-

ing to enjoin "any act or practice which would deprive" any citizen "otherwise qualified by law to vote" of his right to participate in elections "without distinction of race, color, or previous condition of servitude." So much is beyond dispute: these are the relevant terms of Section 1971 of Title 42 of the United States Code as amended by the Civil Rights Act of 1957, sustained as applied to the acts of State officials in *United States* v. *Raines*, 362 U.S. 17.[56] The majority below held, however, that, whereas 42 U.S.C. 1971(c) authorizes the federal government to challenge the action of individual registrars in discriminatorily administering valid laws, the statute does not invest the United States or its Attorney General with power to bring an action to enjoin conduct *pursuant* to the State's constitution or laws (R. 1538).

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[56] Because, in our view, the statutory basis for the present suit is clear, we find it unnecessary to discuss other possible grounds of standing. At least insofar as the challenged registration laws discriminate against Negroes with respect to their right to vote in *federal* elections (see *Ex parte Siebold*, 100 U.S. 371; *Ex parte Yarborough*, 110 U.S. 651; *Logan* v. *United States*, 144 U.S. 263; *Wiley* v. *Sinkler*, 179 U.S. 58; *Swafford* v. *Templeton*, 185 U.S. 487; *United States* v. *Mosley*, 238 U.S. 383; *Burroughs and Cannon* v. *United States*, 290 U.S. 534; *United States* v. *Classic*, 313 U.S. 299; *United States* v. *Saylar*, 322 U.S. 385; *Wesberry* v. *Sanders*, 376 U.S. 1), the United States may have standing, independent of 42 U.S.C. 1971(c), to seek injunctive relief. Cf. *In re Debs*, 158 U.S. 564; *United States* v. *City of Jackson, Mississippi*, 318 F. 2d 1, 320 F. 2d 870 (C.A. 5); *United States* v. *U.S. Klans*, 194 F. Supp. 897 (M.D. Ala.); *United States* v. *City of Montgomery*, 201 F. Supp. 590 (M.D. Ala.); *United States* v. *Louisiana*, 225 F. Supp. 353 (E.D. La), appeal pending, No. 67, this Term.

On its face, this proposition is remarkable. The result would be that the Attorney General could seek injunctive relief against the relatively "little" wrongs involved in the discriminatory "torts" of minor officials, but that federal district judges must turn a deaf ear to his plea that Negroes are being disfranchised under authority of organic and statutory provisions of State law which bring about discrimination on a massive scale. Indeed, if the majority below were correct, suit would not lie to restrain action taken under a State law which explicitly denied Negroes the right to vote. Such a narrow and paradoxical construction of the statute is warranted neither by its language nor by its legislative history. It rests on alternative premises, both equally fallacious.

A. SECTION 1971(a) SECURES THE RIGHT TO VOTE FREE FROM RACIALLY DISCRIMINATORY STATE CONSTITUTIONS AND LAWS.

The holding below is predicated, first, on the proposition that Section 1971(a)—the old statute[57] which defines the "right or privilege" which, since the Civil Rights Act of 1957 (42 U.S.C. 1971(c)), the Attorney General is authorized to enforce—does not secure the right to vote *as against discriminatory State organic or statutory laws.* The suggestion is that, because Section 1971(a) guarantees freedom from racial discrimination only to those "who are

[57] 42 U.S.C. 1971(a) derives from §1 of the Act of May 31, 1870, 16 Stat. 140. It was later incorporated in the Revised Statutes as § 2004. See *United States* v. *Raines*, 362 U.S. 17, 19, note 1.

otherwise qualified by law to vote," the provision does not permit questioning the validity of the voting laws themselves, however discriminatory.

The text of the statute is a full answer. It provides:

> All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, * * * township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; *any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding* [emphasis added].

In context, it is plain that the phrase "otherwise qualified by law" in section 1971(a) does not mean "otherwise qualified under the laws of the State, whether or not those laws themselves work a discrimination on account of race or color." Such a construction wholly ignores the last clause of the provision (emphasized in the quoted text, above)—the obvious intent of which is to remove racially discriminatory qualification laws (organic or statutory) as effective bars to the exercise of the elective franchise. The reading of the court below would render the statute meaningless, for a State could then disfranchise Negroes simply by erecting a statutory barrier to their participation in elections by expressly decreeing that Negroes could not vote, or by enacting strict standards

and exempting therefrom persons previously registered at a time when Negroes were not permitted to vote. See *Lane* v. *Wilson,* 307 U.S. 268; *Guinn* v. *United States,* 238 U.S. 347. Obviously, as Judge Brown noted in his dissent below (R. 1570), the "law" under which the claimant must be "otherwise qualified" does not include racially discriminatory provisions invalidated by the Fifteenth Amendment. Cf. *Neal* v. *Delaware,* 103 U.S. 370, 389.[58]

The fact is that Section 1971(a) is a statutory recital of the rights guaranteed by the Fifteenth Amendment, fully as broad as the constitutional provision which inspired it. Those who were present at its

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[58] A Delaware constitutional provision restricted the right of suffrage at general elections to free white male citizens, and a Delaware statute confined the selection of jurors to persons "qualified to vote at the general election." The question was whether a Negro indicted in a Delaware court could remove his case to a federal court on the ground that Delaware's constitution and laws denied to Negroes the right to serve as jurors. Holding that the discrimination did not result from Delaware's Constitution and laws, this Court said (103 U.S. 370, 389):

"Beyond question the adoption of the Fifteenth Amendment had the effect, in law, to remove from the State Constitution, or render inoperative, that provision which restricts the right of suffrage to the white race. Thenceforward, the statute which prescribed the qualifications of jurors was, itself, enlarged in its operation, so as to embrace all who by the State Constitution, as modified by the Supreme law of the land, were qualified to vote at a general election."

If the phrase "qualified to vote" in a *State* statute means "qualified to vote under *valid* State law," *a fortiori,* it means the same thing in a *federal* statute implementing the Fifteenth Amendment.

enactment in 1870, both proponents [59] and opponents,[60] so viewed it, as did the legislators of 1957 who added to it.[61] The lower federal courts have consistently so understood it, from the beginning [62] to the present.[63] Indeed, this Court has impliedly equated the statute and the Amendment it implements, *Guinn* v. *United States, supra,* 238 U.S. at 355, 361, *Myers* v. *Anderson,* 238, U.S. 368, 379.[64] Thus, it is clear that Sec-

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[59] Representative Davis of New York, who had served on the conference committee, stated: "The first section is substantially a recital of e provisions of the Constitution." 92 Cong. Globe 3882.

[60] Senator Morton of Indiana asserted that "[t]he first section might be left out * * * because it is simply declaratory of the amendment itself." 91 Cong. Globe 3571. Similarly, Senator Thurman of Ohio declared that "[y]ou cannot add any strength to the fifteenth constitutional amendment by putting the very identical provision of that amendment into the shape of a statute." 91 Cong. Globe 3485. And Representative Swaim of Maryland, also an opponent of the bill, said that section 1 was "affirmatory only of the Fifteenth Amendment." 94 Cong. Globe 432. See also the remarks of Representative Kerr of Indiana. 92 Cong. Globe 3872.

[61] The bill which ultimately became the Civil Rights Act of 1957 was H.R. 6127, introduced by Representative Celler, chairman of the House Committee on the Judiciary. Discussing subsection (a) on the floor of the House, he referred to it as "a statutory declaration of the protection of the fifteenth amendment * * *. Cong. Rec. 84th Cong. 2d Sess. 12925.

[62] See, *e.g., Ex Parte McIllree,* 16 Fed. Cas. No. 8,820 (C.C. Va. 1870).

[63] See, *e.g., United States* v. *McElveen,* 177 F. Supp, 355, 358–359 (E.D. La.), later judgment affirmed in part *sub nom. United States* v. *Thomas,* 362 U.S. 58.

[64] Whereas it has recently been said that § 1971(a) has a broader scope than the Fifteenth Amendment, and is therefore unconstitutional in whole or in part, see *United States* v. *Raines,* 172 F. Supp. 552 (M.D. Ga.), reversed, 362 U.S. 17, the reverse has never been suggested. The dearth of judicial opinion

tion 1971(a), like the Fifteenth Amendment itself, nullifies racially discriminatory voting laws as well as the acts of lesser officials. See *Lane* v. *Wilson, supra; Guinn* v. *United States, supra; Myers* v. *Anderson, supra; Ex Parte Yarbrough,* 110 U.S. 651, 665; *Neal* v. *Delaware,* 103 U.S. 370.

B. SECTION 1971(C) AUTHORIZES THE UNITED STATES TO INSTITUTE PROCEEDINGS TO SECURE SECTION 1971(A) RIGHTS, INCLUDING THE RIGHT TO EXEMPTION FROM RACIALLY DISCRIMINATORY STATE VOTING LAWS, CONSTITUTIONAL AND STATUTORY

The second predicate of the decision below—insofar as it dismissed the complaint on the ground that the Attorney General lacked authority to bring the action—appears to be that, whatever the scope of Section 1971(a), Section 1971(c), added by the Civil Rights of 1957, permits only a suit to restrain a "person" who "engage[s]" in "act[s] or practice[s]" violative of the rights secured by the substantive provision, and not a challenge to State laws themselves, even if their enforcement abridges Section 1971(a) rights (R. 1539–1540).

Again, we turn to the text of the provision invoked. So far as here relevant, Section 1971(c) reads:

> Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or prac-

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interpreting Section 1971(a) reflects the fact that—until 1957 when it defined the scope of a suit by the United States—it was viewed as a merely declaratory provision which added nothing to the self-executory first section of the Fifteenth Amendment. See *United States* v. *Reese,* 92 U.S. 214, 216; *Terry* v. *Adams,* 345 U.S. 461, 481, note 9.

> tice which would deprive any other person of any right or privilege secured by subsection (a) or (b) of the section, the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. * * *

On its face, the statute seems to authorize a suit to enjoin every "act" which abridges a "right or privilege" secured by Section 1971(a). Since the substantive provision referred to, as we have seen, confers, *inter alia,* an exemption from racially discriminatory voting laws, and the present section draws no distinction, it would seem to make no difference whether the "act or practice" complained of (assuming it is "State action," as is conceded here)[46] is *dictated* by the State constitution or statutes, merely *permitted* by local law, or *proscribed* by it. Nothing in the language of Section 1971(c) suggests a contrary result. Plainly, whoever else is meant to be included, State officials are "persons", and, when they apply discriminatory laws, albeit under direct command from the State constitution or statutes, they "engage in [a prohibited] act or practice" to the same degree as when they discriminate on their own initia-

[46] There is no occasion here to consider whether Section 1971(c) attempts to reach too far when it authorizes a suit to restrain racially discriminatory acts of "any person" with respect to non-federal elections. See *United States* v. *Raines*, *supra*, 362 U.S. at 19–20, 24–26. But no such question is presented here, where only the State and certain of its officers, acting in their official capacities, are sought to be restrained.

tive. The only difference is that, in the one case, the State officials are enjoined from enforcing offensive laws, while, in the other, the constitutional and statutory provisions themselves are not affected and the unauthorized conduct of the offending official alone is restrained.

This natural reading of Section 1971(c) is fully confirmed by its legislative history. In describing the proposed legislation, which became Section 1971(c), the Report of the Committee on the Judiciary of the House of Representatives stated: "Therefore, the sovereign, acting within its constitutional jurisdiction, must preserve this fundamental and basic right *against any and all unlawful interference. That the proposal of this section does that very thing is clear.*" House Report No. 291, Committee on the Judiciary, 85th Cong., 1st Sess., p. 13 (emphasis added). And in the hearings before the House Rules Committee, Representative Keating of New York, a member of the Judiciary Committee which reported out the bill, stated: "The Attorney General is given the right to bring civil actions *to prevent any kind of activity aimed at disenfranchising the citizens* * * *" (emphasis added). Hearings before the House Rules Committee on H.R. 627, 84th Cong., 2nd Sess., pp. 64–65.[46]

Opponents of the proposal were clear as to its scope. Thus, Senator Ervin of North Carolina stated before

[46] See, also, the remarks of Congressman Celler of New York (p. 47) and Congressman Smith of Virginia (p. 49). Hearings, *supra*.

the subcommittee on constitutional rights of the Senate Judiciary Committee:

> To my mind these proposed amendments are a most drastic alteration in the law of our country in that first, they allow, as I construe them, the Attorney General in the exercise of his discretion, *to set at nought statutes enacted by States* in the exercise of their powers both under the State and Federal Constitutions; * * *. Hearings before the Subcommittee on Constitutional Rights, Senate Committee on Judiciary, 85th Cong., 1st Sess., p. 191 [emphasis added].

Again, during hearings of the Committee on Rules of the House of Representatives, Senator Ervin testified:

> So the Attorney General under this bill could bring a suit for any alien, any citizen, any private corporation, on any cause of action which alleged that, either *by the wording of the State law* or by the application to him of the State law by State or local officials, he had suffered discrimination; * * * Hearings before Comm. on Rules, House of Rep. on H.R. 6127, 85th Cong., 1st Sess., p. 130 [emphasis added].

Finally, it is instructive that, when adding to the provision in 1960, Congress understood that it had already authorized suits directly challenging discriminatory State statutes. This is made plain by the legislative history of new Section 1971(e), added by the Civil Rights Act of 1960 (Pub. L. 86-449, § 601 (a); now 42 U.S.C. (Supp. V) 1971(e)). As we elaborate later (*infra*, pp. 94-96), the new provision permits special relief in the event the court finds that a violation of Section 1971(a) is "pursuant to a pat-

tern or practice." Explaining that phrase on the day the proposal passed the Senate, Senator Keating, a prominent proponent,[47] explicitly stated (106 Cong. R. 7767) that the "enactment of a statute directed at Negroes could in itself constitute a pattern or practice of discrimination." Since Section 1971(e) is, in terms, applicable only to a suit by the Attorney General under Section 1971(c), it follows, of course, that an act done "pursuant to" a State law is within the reach of the latter provision.

II

THE STATE OF MISSISSIPPI WAS PROPERLY JOINED AS A PARTY DEFENDANT

The apparent predicate of the majority below in sustaining Mississippi's motion to dismiss is that an "Indestructible State" is amenable to suit by the national sovereign only in very rare circumstances, which even the most explicit Congressional authorization cannot unduly expand (see R. 1531). There is no such rule. Whereas the United States enjoys an absolute immunity from unconsented suits by the States, the reverse has never been true. *Kansas* v. *United States*, 204 U.S. 331, 342. Under familiar principles, the United States may freely sue a State. In this respect—to borrow the blunt phrase of Mr. Justice Holmes from a somewhat different context—a proceeding by the United States to enforce the Constitution against State action "is not a controversy

[47] See *Coleman* v. *Kennedy*, 313 F. 2d 867, 868 (C.A. 5), certiorari denied, 373 U.S. 950, where the court characterized Senator Keating as "one of the principal spokesmen for the bill in the Senate."

between equals." *Sanitary District* v. *United States,* 266 U.S. 405, 425. At least since *United States* v. *Texas,* 143 U.S. 621, it has been settled that the States, by joining the Union and submitting to the Constitution, surrendered any claim of "sovereign immunity" as against the national government.

Of course, the United States must have the interest necessary to maintain the action and the State must be an appropriate defendant. As in other cases, the standing of the United States to bring the proceeding may be inherent, as when it sues to recover its own property (*e.g., United States* v. *Oregon,* 295 U.S. 1) or that of its wards (*e.g., United States* v. *Minnesota,* 270 U.S. 181); when the action is on a monetary claim, whether arising out of contract (*e.g., United States* v. *North Carolina,* 136 U.S. 211), tort (*e.g., United States* v. *California,* 328 F. 2d 729 (C.A. 9), certiorari denied, October 12, 1964, No. 87, this Term), or otherwise (*e.g., United States* v. *Michigan,* 190 U.S. 379); and when the government seeks to enjoin State interference with federal rights (*e.g., United States* v. *California,* 332 U.S. 19), federal activities (see *United States* v. *West Virginia,* 295 U.S. 463, 473), federal officers (*e.g., United States* v. *Louisiana,* 188 F. Supp. 916 (E.D. La.), stay denied, 364 U.S. 500, and affirmed *sub nom. Bush* v. *Orleans Parish School Board,* 365 U.S. 569), or the orders of a federal court (*e.g., United States* v. *Mississippi,* No. 19,475, 9/25/62 (C.A. 5), leave granted to United States to be joined as respondent and certiorari denied *sub nom. Mississippi* v. *Meredith,* 372 U.S. 916). In such instances, it is irrelevant that

Congress has withheld express authorization for the suit. *United States* v. *California, supra,* 332 U.S., at 26–28. On the other hand, standing may derive from statute. That is the case when the government sues to collect a tax (*e.g., New York* v. *United States,* 326 U.S. 572), or a penalty (*e.g., United States* v. *California,* 297 U.S. 175). Cf. *United States* v. *Raines,* 362 U.S. 17. But, whatever the basis, the sufficiency of the interest to prosecute the suit does not depend on the character of the defendant. If the United States can sue at all, it can sue a State (if, otherwise, a proper respondent).[68]

Thus, here, the standing of the United States being settled beyond constitutional doubt by Section 1971(c) (*supra,* pp. 49–53), it should follow, without more, that the State can be sued. There is no separate question of authorization to join the State. The only relevant inquiry is whether Congress has changed the usual rule by explicitly barring an action against the State and whether, in the circumstances, the State is

[68] Prior to the revision of the Judicial Code in 1948, there was a *jurisdictional* difference in that, absent a special provision, suits by the United States against a State were within the exclusive original jurisdiction of this Court. See 28 U.S.C. (1940 ed.) 341. Even then, the power of Congress to provide for the trial of such cases in the district court had been affirmed (see *Ames* v. *Kansas,* 111 U.S. 449; *United States* v. *Louisiana,* 123 U.S. 32) and, in specific instances, that power had been exercised. *E.g., United States* v. *California,* 297 U.S. 175; *Case* v. *Bowles,* 327 U.S. 92. Now, however, by virtue of 28 U.S.C. 1251(b)(2) and 1345, the district courts may entertain any suit by the United States against a State without special legislation. Thus, here, there is no question of the district court's jurisdiction. It is, in any event, explicitly confirmed by 42 U.S.C. 1971(d).

an appropriate defendant. Whatever the answer earlier (see *United States* v. *Alabama*, 171 F. Supp. 720 (M.D. Ala.), affirmed, 267 F. 2d 808 (C.A. 5), vacated and remanded, 362 U.S. 602),[69] both questions have been resolved by Section 601(b) of the Civil Rights Act of 1960, which added the second paragraph to Section 1971(c) (42 U.S.C. (Supp. V) 1971(c)).

A. SECTION 601(b) OF THE CIVIL RIGHTS ACT OF 1960 EXPRESSLY CONFIRMS THE AUTHORITY OF THE ATTORNEY GENERAL TO JOIN THE STATE AS A PARTY DEFENDANT

Section 601(b) of the Civil Rights Act of 1960 (74 Stat. 90) added the following paragraph to Section 1971(c):

> *Whenever*, in a proceeding instituted under this subsection any official of a State or subdivision thereof is alleged to have committed any act or practice constituting a deprivation of any right or privilege secured by subsection (a) of this section, the act or practice shall also be deemed that of the State and the State may be *joined* as a party defendant *and*, if, prior to the institution of such proceeding, such official has resigned or has been relieved of his

[69] Even before the 1960 amendment to § 1971(c), the only real argument that joinder of the State was unauthorized was that the original section impliedly restricted the Attorney General to injunctive proceedings against a "person" and that a State is not a person. As we argued in the *Alabama* case, the weakness of that contention is illustrated by such decisions as *South Carolina* v. *United States*, 199 U.S. 437; *Ohio* v. *Helvering*, 292 U.S. 360; *United States* v. *California*, 297 U.S. 175; *New York* v. *United States*, 326 U.S. 572; and *Sims* v. *United States*, 359 U.S. 108. See Brief for the United States in *United States* v. *State of Alabama*, No. 396, October Term 1959, pp. 24–40. In light of the intervening legislation, this Court did not resolve the question. 362 U.S. at 604.

> office and no successor has assumed such office, the proceeding may be *instituted* against the State. [Emphasis added.]

On its face, the statute is unambiguous. We cannot improve on Judge Brown's explication in his dissenting opinion below (R. 1572):

> * * * First, as a substantive matter, it declares that "any act or practice constituting a deprivation" of subsection (a) rights committed by "any official of a state or subdivision thereof" shall "be deemed that of the state." Second, it provides a procedural remedy to enforce that substantive right. It does this by prescribing two things: (a) the "state may be *joined* as a defendant"; and (b) if there is no person holding the office capable of being sued as a defendant to which the state may be *joined*, then "the proceeding may be *instituted* against the state."

To construe Section 601(b) as precluding suit against the State where there are functioning registrars—as the majority below did—is to ignore the plain words of the statute. Nor does its legislative history support that result.

To be sure, the provision was enacted when the *Alabama* case was pending here (see 362 U.S. 602) and was designed to meet the situation presented there, in which the registrars had resigned and had not yet been replaced. The original version of Section 601(b) did no more than solve the *Alabama* problem. The measure (H.R. 10035) at first provided (106 Cong. Rec. 1575):

> When any official of a state or subdivision thereof has resigned or has been relieved of his

> office and no successor has assumed such office, any act or practice of such official constituting a deprivation of any right or privilege secured by subsection (a) or (b) hereof shall be deemed that of the State and the proceeding may be instituted or continued against the State as party defendant.

But, during the ensuing hearings, additional problems were noticed. See Voting Rights, Hearings before the Committee on the Judiciary, House of Representatives, 86th Cong., 2d Sess., Feb. 9 & 16, 1960. The following inquiry by Chairman Celler of the House Judiciary Committee (*id.*, at 34) shows the focus:

> Let us assume that a State registrar has resigned who was the defendant in the original proceeding.
>
> * * * * *
>
> The proceedings were started against him, and the order was issued against the man who has resigned, or the man who is dead after the order was issued. What happens then?

Chairman Celler's question highlighted the need for a provision that would authorize not only *institution* of the suit against the State if the registrars had already resigned and *substitution* of the State as defendant if the registrars resigned in mid-suit, but, also, *joinder* of the State with the registrars (among other things, to take care of the case in which they resigned or died after the decree was rendered). Accordingly, a revised bill (H.R. 10625) was intro-

duced by Congressman McCullough (the author of the original bill) which—as he said (106 Cong. Rec. 3293)—included the improvements suggested by the hearings. The new measure—permitting joinder of the State in every case where State officials were alleged to be abridging Section 1971(a) rights—was enacted as Section 601(b).

Finally, the question whether Section 601(b) authorizes joinder of the State when there are, at the outset, registrars amenable to suit, is fully settled by the decided cases. Indeed, this Court's affirmance of the *Alabama* decision after remand at least impliedly upholds joinder of the State in such circumstances. *United States* v. *Alabama*, 371 U.S. 37, affirming, 304 F. 2d 583 (C.A. 5). For, there, dismissal of the State was denied even after new registrars had qualified and the decree was rendered against both. See 188 F. Supp. 759, 762; 192 F. Supp. 677 (M.D. Ala.). The lower courts have consistently so ruled.[70] *United States* v. *Lynd*, 301 F. 2d 818 (C.A. 5), certiorari denied, 371 U.S. 893; *United States* v. *Dogan*, 314 F. 2d 767, 771 (C.A. 5); *United States* v. *Lynd*, 321 F. 2d 26, 27 (C.A. 5), certiorari denied, 375 U.S. 968; *United States* v. *Duke*, 332 F. 2d 759, 770 (C.A. 5); *United States* v. *Louisiana*, 225

[70] Besides the instant case, a single member of a three-judge court in a very recent suit filed by the Attorney General since the enactment of the Civil Rights Act of 1964 dismissed the State of Mississippi as a defendant prior to trial. That ruling is subject to review by the court as a whole. *United States* v. *McClellan*, No. C.A. 3607(J)(M), (S.D. Miss.), August 21, 1964.

F. Supp. 353, 356 (E.D. La.), appeal pending, No. 67, this Term."

B. THERE IS NO CONSTITUTIONAL OBSTACLE TO JOINDER OF THE STATE

Without ruling on the question, the majority below characterized as "substantial" Mississippi's claim that Section 601(b) is unconstitutional because the Fifteenth Amendment only authorizes implementing legislation directed "to persons through whom a state may act and not to the sovereign entity of the state itself" (R. 1518). The contention is based on what Judge Brown characterizes as the "Eleventh Amendment dialectic" (R. 1574) which draws a distinction between the State as an idealism, incapable of wrong, and its erring agents, who are viewed as acting individually

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[11] See, also, *United States* v. *Penton*, 212 F. Supp. 193, 200 (M.D. Ala.); *United States* v. *Fox*, 211 F. Supp. 25, 35 (E.D. La.), affirmed, 334 F. 2d 449 (C.A. 5); *United States* v. *Wilder*, 222 F. Supp. 749, 753, 754–755 (W.D. La.); *United States* v. *Ward*, 222 F. Supp. 617, 620 (W.D. La.), appeal pending, No. 21235, C.A. 5; *United States* v. *Manning*, 205 F. Supp. 172, 174 (W.D. La.); *United States* v. *Clement*, 231 F. Supp. 913 (W.D. La.); *United States* v. *Crawford*, 229 F. Supp. 898, 901 (W.D. La.); *United States* v. *Logue*, Civil Action No. 3081–63, (S.D. Ala.), March 31, 1964; *United States* v. *Cartwright*, 230 F. Supp. 873 (M.D. Ala.); *United States* v. *Cox*, No. D–C–53–61, (N.D. Miss.), June 24, 1964.

There are, it is true, decisions holding that, in the circumstances, the State should not be joined in the ultimate decree. See *United States* v. *Atkins*, 323 F. 2d 733, 740, n. 8 (C.A. 5); *United States* v. *Ramsey*, 331 F. 2d 824, 826 (C.A. 5); *United States* v. *Ford*, Civil Action No. 2829, S.D. Ala., decided April 13, 1964. But that is a separate question. No court, before the decision below, has held joinder of the State unauthorized under Section 601(b). Nor was the State ever dismissed prior to trial until this case.

and unofficially when violating the Constitution. See *Ex Parte Young*, 209 U.S. 123, 159. There are two answers.

First, the State is not joined here as an abstraction; in Section 601(b) the term "State" is used precisely in the same sense as in the Fifteenth Amendment. Here, as there, "State" is a convenient collective embracing the several branches and officers of the State government. Under Section 601(b), the State is sued only because the responsible officials are unknown or may withdraw and lose their identities. In effect, the action is directed to all those who participate in the scheme of racial disfranchisement, none of whom, of course, enjoys legal immunity from the Constitution—be they legislators (*e.g., Lucas* v. *Colorado Gen. Assembly*, 377 U.S. 713), the governor (*e.g., Sterling* v. *Constantin*, 287 U.S. 378), judges (*e.g., Ex Parte Virginia*, 100 U.S. 339), or lesser officials. See *Cooper* v. *Aaron*, 358 U.S. 1, 16–19. After all, the State "can act in no other way." *Ex Parte Virginia, supra*, 100 U.S. at 347. And, when the thrust of the suit is merely to enjoin conduct (without touching State property) a decree nominally against the State actually reaches its agents alone. In short, the suit is against the State government. If private plaintiffs were involved, the Eleventh Amendment or considerations of sovereign immunity might render such shorthand impermissible; but, as we have already shown, the United States labors under no comparable disability.

The distinction between the United States and a private plaintiff suggests a second answer—perhaps more direct. The cases invoked by Mississippi below

deal with a question of remedies: by virtue of the Eleventh Amendment and the doctrine of sovereign immunity, the States, as such, are not amenable to private suits, whether asserting rights under the Constitution or otherwise. But it does not follow that the States are not bound to obey the Fifteenth Amendment's command, which "is directed to the United States and to the individual States." *Terry* v. *Adams*, 345 U.S. 461, 473 (opinion of Mr. Justice Frankfurter). On the contrary, as this Court said with respect to the Fourteenth Amendment in *Home Tel. & Tel Co.* v. *Los Angeles*, 227 U.S. 278, 286–287, in language equally applicable to the Fifteenth:

> * * * the provisions of the Amendment as conclusively fixed by previous decisions are generic in their terms, are addressed, *of course, to the States*, but also to every person whether natural or juridical who is the repository of state power. By this construction the reach of the Amendment is shown to be coextensive with any exercise by a State of power, in whatever form exerted. [Emphasis added.][72]

[72] The Court further indicated that "the Amendment, looking to the enforcement of the rights which it guarantees and to the prevention of the wrongs which it prohibits, *proceeds not merely upon the assumption that States acting in their governmental capacity in a complete sense may do acts which conflict with its provisions*, but, also conceiving, which was more normally to be contemplated, that state powers might be abused by those who possessed them and as a result might be used as the instrument for doing wrongs, provided against all and every such possible contingency. Thus the completeness of the Amendment in this regard is but the complement of its *comprehensive inclusiveness from the point of view of those to whom its prohibitions are addressed*." 227 U.S. at 288. [Emphasis added.]

That the States are not always answerable does not mean that there is no duty. Nor does immunity from suit imply that no "wrong" has been done, but rather, that, as respects those barred from suing, there is no *legally cognizable* wrong which they can have "righted" by the judicial process. See *Kawananakoa* v. *Polyblank,* 205 U.S. 349, 353. In short, the State is an "idealism," sovereign and perfect, only in the sense that there will be no inquiry into the lawfulness of its action in a private suit. Hence, when the United States is plaintiff and the shield of sovereign immunity no longer blinds the eyes of the law, the State itself may be seen to have committed wrongs which require correction. As the court said in the companion *Louisiana* case (No. 67, this Term), *supra,* 225 F. Supp. at 357, "[the] necessary fiction to accommodate the Eleventh Amendment provides no basis for any argument that the State cannot be made a party to this action." See, also, *United States* v. *Fox,* 211 F. Supp. 25 (E.D. La.), affirmed, 334 F. 2d 449 (C.A. 5).[73]

C. JOINDER OF THE STATE WAS APPROPRIATE

Announcing that "the act or practice" of any State official which is alleged to violate Section 1971(a) rights "shall also be deemed that of the State," Section 601(b) accordingly provides that "the State *may*

[73] Cf. *Iowa-Des Moines National Bank* v. *Bennett,* 284 U.S. 239, 246, n. 5, where Justice Brandeis stated: "Cases discussing the question of what constitutes a suit against the State within the meaning of the Eleventh Amendment * * * have no bearing upon the power of this Court to protect rights secured by the federal Constitution."

be joined as a party defendant * * *." In our view, this provision for permissive joinder leaves entirely to the Attorney General the determination whether the State will be named as a respondent. But even if his determination could properly be regarded as reviewable, it would be plain that the State of Mississippi was appropriately joined here.

We have already noted (*supra,* p. 60) that, until the present decision, no court had dismissed the State as a party defendant prior to trial. The reason, we suggest, is that normally the question whether there is occasion to join the State cannot be definitively resolved on the face of the pleadings. In the present case, however, it was clear, from the outset, that the State of Mississippi was an appropriate defendant. First, the complaint challenges the validity of the State Constitution and laws of statewide application. On this score alone, the State is an interested party, as the requirement of a three-judge court and notice to its governor and attorney general suggests. See 28 U.S.C. 2281, 2284(2). Second, the complaint charges discrimination not only by the named individual defendants, but by a host of Mississippi officials throughout the State for three-quarters of a century. The burden of the defense (if one can be made) appropriately falls on the State itself. And, finally, the prayer seeks statewide relief, not confined to the counties whose registrars are joined (see *infra,* pp. 91–96). Plainly, no fully effective remedy can be given unless the State, in all its governmental operations, is enjoined from abridging rights guaranteed

by the Fifteenth Amendment and its implementing legislation.

In sum, whatever the proper rule in another case, this is unmistakably an appropriate occasion for the joinder of the State itself as a party defendant. As Judge Brown stated in the dissenting opinion below, "[the] contest is a big one. It is no little controversy between one or more individual Negro voters and individual Registrars. It is between all Negro adults and the State. Indeed, it is between all citizens of the United States and the State. In that setting it is fitting that the protagonists appear to be what they really are—the United States and the State of Mississippi" (R. 1566).

III

THE MEMBERS OF THE BOARD OF ELECTION COMMISSIONERS AND THE COUNTY REGISTRARS WERE PROPERLY JOINED AS DEFENDANTS

After dismissing the State, the court below went on to hold that most of the other defendants were also improper parties. The ruling with respect to the members of the Mississippi Board of Election Commissioners was that their role in the alleged voting discrimination was insufficient to warrant their joinder (R. 1532–1534). Whereas the county registrars were apparently viewed as real defendants (R. 1534), the majority held their joinder in a single action impermissible (R. 1535) and found venue lacking as to four of the six (R. 1536). Presumably, if the action had not been dismissed on other grounds, the court would have severed the claims against each registrar, and transferred all but two for trial in different dis-

tricts or divisions. See Rule 21, F. R. Civ. P.; 28 U.S.C. 1406(a). These rulings, we submit, are plainly erroneous.

A. THE STATE ELECTION COMMISSIONERS WERE PROPERLY JOINED

The provision of the Judicial Code requiring the convening of a three-judge court when the "enforcement, operation or execution" of a State statute is sought to be enjoined assumes that the result may be accomplished "by restraining the action of any officer of such State in the enforcement or execution of such statute." 28 U.S.C. 2281. There is no requirement that relief be sought, or granted, only against the one official most immediately engaged in administration of the challenged law. On the contrary, it is well settled that a three-judge court may properly enjoin all those charged with executing an unconstitutional statute. *Bevins* v. *Prindable,* 39 F. Supp. 708 (E.D. Ill.), affirmed *per curiam,* 314 U.S. 573; *Orleans Parish School Board* v. *Bush, et al.,* 268 F. 2d 78, 80 (C.A. 5). See, also, *James, et al.* v. *Almond, et al.,* 170 F. Supp. 331, 341 (E.D. Va.), appeal dismissed, 359 U.S. 1006; *Evans, et al.* v. *Members of the State Board of Education, et al.,* 149 F. Supp. 376, 378 (D. Del.), affirmed *sub nom. Evans* v. *Buchanan,* 256 F. 2d 688 (C.A. 3), certiorari denied, 358 U.S. 836. The State Election Commissioners (as one might assume) have an important role in the administration of the Mississippi statutory and constitutional provisions under attack. They were properly joined.

The principal duty of the State Board of Election Commissioners (which consists of the Governor, the Secretary of State, and the Attorney General)[74] is preparation of the application forms, which the Board may revise at any time.[75] The forms and the questions on the forms are a principal issue in this case. These forms implement the challenged provisions of the Mississippi Constitution and laws. Thus, Section 3209.6 of the Mississippi Code[76] specifically directs that the application be "designed to test the ability of applicants for registration to vote, to read and write any section of the Constitution of this State and give a reasonable interpretation thereof, and demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government; and to demonstrate to the county registrar that applicant is a person of good moral character as required by section 241–A of the Constitution of Mississippi."[77]

[74] Section 3204, Miss. Code.

[75] The Board also is authorized by section 3204 of the Mississippi Code to appoint three election commissioners for each county; and formally to appoint the local registrar, who is the clerk of the local circuit court, unless the Board determines the clerk is an "improper person" (Sections 3204, 3206, Miss. Code). The Board also appoints deputy registrars. Section 3206, Miss. Code.

[76] See, also, Section 244 of the Mississippi Constitution and section 3213(1), Miss. Code, containing the requirement that the application form exhibit the necessary qualifications.

[77] The Section also directs that the application forms are to include the oath required by section 242 of the Mississippi Constitution, and certain prescribed information including the date of registration, the name, age, and occupation of the applicant, his employer, his past and present residences, and whether he had been convicted of any disqualifying crime.

Since the complaint seeks to restrain further use of these tests, and to require the registration of all Negroes who meet specified qualifications, full relief would appropriately include an injunction directing the members of the State Board to omit from the forms questions designed to exhibit the qualifications nullified by the court decree. The registrars could then freely comply with the injunction, without resolving a possible conflict between the court order and directives of the Board, which has the power to remove a registrar if he is an "improper person." Section 3204, Mississippi Code. Cf. *Bush* v. *Orleans Parish School Board,* 187 F. Supp. 42 (E.D. La.), affirmed, 365 U.S. 569; *id.,* 188 F. Supp. 916, 928–929, affirmed, 365 U.S. 569; *id.,* 190 F. Supp. 861, 865–866, affirmed, 366 U.S. 212; *id.,* 191 F. Supp. 871, 873–875, affirmed, 367 U.S. 908. See, also, *United States* v. *Barnett,* 376 U.S. 681, 684.

B. JOINDER OF THE REGISTRARS WAS PROPER

Rule 20(a) of the Federal Rules of Civil Procedure provides:

> * * * [a]ll persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, *any* right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. * * *.

These requirements are satisfied here. *First,* questions of law common to all the registrars will arise in

the action because it is claimed that each registrar is administering, in common with the others, a particular set of unconstitutional laws. *Second,* there is asserted against the registrars a right to relief "in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences." If the "transaction" or "occurrence" is viewed as the legislative enactment of an unconstitutional law, the relief asserted relates to the same "series of transactions or occurrences", namely the enactment of the various constitutional and statutory provisions involved. If, on the other hand, the relevant transaction or occurrence is viewed, more technically, as the use by each defendant of the challenged laws, these "occurrences" are nevertheless part of "a series", all contributing to the enforcement of the same challenged laws.[78]

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[78] An apt analogy is provided by judicial construction of Rule 13(a), F.R. Civ. P., which provides in pertinent part that "[a] pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if [*inter alia*] it arises out of *the transaction or occurrence* that is the subject matter of the opposing party's claim * * * " (emphasis added). The courts have given a liberal construction to the underscored language. *E. J. Korvette Co.* v. *Parker Pen Co.*, 17 F.R.D. 267 (S.D. N.Y.); *Phelan* v. *Middle States Oil Corp.*, 124 F. Supp. 728 (S.D. N.Y.), appeal dismissed in part and cause remanded in part on other grounds, 210 F. 2d 360, affirmed, 220 F. 2d 593 (C.A. 2), certiorari denied *sub nom. Cohen* v. *Glass* 349 U.S. 929; *Rosenthal* v. *Fowler*, 12 F.R.D. 388 (S.D. N.Y.); 3 Moore's *Federal Practice*, paragraph 13.13, p. 33 (2d ed.). A counterclaim is compulsory within the meaning of Rule 13(a) if it bears a "logical relationship" to an opposing party's claim. *Moore* v. *New York Cotton Exchange*, 270 U.S. 593, 610; *National Equipment Rental Ltd.* v. *Fowler*, 287 F.2d 43, 45 (C.A. 2); *Great Lakes Rubber Corp* v. *Herbert Cooper*

In the typical case in which the constitutionality of a State voter registration law is challenged, only one official or agency is named as a defendant because the claimant, in order to obtain effective relief, need sue only the local official who has enforced or threatens to enforce the law against him. See, *e.g., Lassiter* v. *Northampton Election Board,* 360 U.S. 45; *Davis* v. *Schnell,* 81 F. Supp. 872 (S.D. Ala.), affirmed, 336 U.S. 933. But if the plaintiff is aggrieved by the enforcement of the law in several different localities, it is obviously desirable to avoid a multiplicity of suits by joining the officials who enforce the law in those localities as defendants in a single action. See *e.g., Bevins* v. *Prindable, 39 F. Supp.* 708 (E.D. Ill.), affirmed, *per curiam,* 314 U.S. 573. Here, of course, the claim is not made on behalf of one individual, or the inhabitants of a single community. The interest of the United States reaches the enforcement of the allegedly unconstitutional statutes wherever and by whomever

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Co., 286 F. 2d 631, 634 (C.A. 3). "[A] counterclaim is logically related to the opposing party's claim where separate trials on each of their respective claims would involve a substantial duplication of efforts and time by the parties and the courts." *Ibid.* The same considerations should apply in determining whether parties defendant are properly joined. See *Eastern Fireproofing Co.* v. *U.S. Gypsum Co.*, 160 F. Supp. 580 (D. Mass.); 2 Barron and Holtzoff, *Federal Practice and Procedure* (Rules ed.) § 533. (Cf *Dombrovskis* v. *Murff*, 24 F.R.D. 302, 304 (S.D. N.Y.) (proposed amendment of complaint alleging that multiple plaintiffs' several constitutional rights were denied by the defendant official's application of unconstitutional standards and procedures to each of them meets the requirements of Rule 20, which sets forth the same criteria for joinder of plaintiffs as for joinder of defendants); *Silverman* v. *Cinofsky*, 15 F.R.D. 122, 123, (N.D. Ill.).

they may be applied. In the circumstances, it is plainly appropriate to join in one suit all those against whom there is specific evidence of illegal action."[76] Since joinder was permissible, venue was proper as to each of the registrars. 28 U.S.C. 1392(a), 1393(b).

IV

THE COMPLAINT STATES A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

As we have elaborated in the Statement (*supra*, pp. 3–8), the complaint filed by the United States challenged the constitutionality of the "interpretation" and "citizenship" tests and the "good moral character" requirement imposed on applicants for voting registration by the Mississippi Constitution (§§ 244, 241–A, *infra*, pp. 106–107), implementing legislation (Miss. Code, §§ 3213, 3209.6 and 3212.5, *infra*, pp. 107–111) and related recent statutes which require the applicant to complete, unaided, a letter-perfect form (§ 3213, *infra*, p. 108), provide for publication of the applicant's name (§ 3212.7, *infra*, p. 111), invite challenges to his "moral character" and other qualifications (§§ 3217–07 through 3217–15, *infra*, pp. 112–115), forbid disclosure to the applicant of the reasons (other than lack of "good moral character") for his disqualification (§ 3212.5, *infra*, pp. 110–111), and,

[76] Since "the convenience of the parties and the court can be fully protected, through joinder is allowed, by separate trials, pursuant to Rule 42(b), * * * it seems practically desirable to give the broadest possible reading to the permissive language of Rule 20." 2 Barron and Holtzoff, *Federal Practice and Procedure* § 533.

finally, authorize destruction of voting records which Title III of the Civil Rights Act of 1960 (42 U.S.C. 1974), requires the registrar to preserve (§ 3209.6, *infra,* pp. 107–108). In each instance, and with particularity, the complaint charged that the guiding purpose of the enactment was to effect or facilitate the disfranchisement of Negroes, that the provisions had so worked or had been so used, and that this result has, in fact, been accomplished. Nor did the government rest on the somewhat conclusory allegations of the complaint; it filed voluminous answers to interrogatories substantiating the charges in massive detail (R. 388–1407; see Statement, *supra,* pp. 10–33). Nevertheless, the court below dismissed the case before trial, on the ground that the complaint "fails to state a claim upon which any relief can be granted" (R. 1563, 1564).

It goes without saying, as the majority below apparently recognized (R. 1509), that the allegations of the complaint must be accepted as true on a motion to dismiss (*e.g., Gomillion* v. *Lightfoot,* 364 U.S. 339), and that dismissal, at this stage, is proper only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley* v. *Gibson,* 355 U.S. 41, 45–46. Nor is there room for disregarding the allegations as "conclusory" in light of the detailed factual responses to interrogatories submitted by the government. Though not evidence, these answers at least demonstrate that the complaint is not a mere catalogue of "empty charges." As Judge Brown noted in

his dissent (R. 1582), they are "the best proof that the Government has at least an arguable basis for establishing its claim." It follows that the decision below must rest on a wholesale rejection of the theory of the complaint, even assuming all its allegations can be proved.

A. THE ESSENTIAL CHARGES OF THE COMPLAINT AND THEIR SUFFICIENCY

We begin with the self-evident proposition that, notwithstanding the originally absolute power of the States to prescribe the qualifications for voting in non-federal elections (later subject to a potential apportionment penalty under the second Section of the Fourteenth Amendment), the Fifteenth Amendment (and 42 U.S.C. 1971(a))[80] invalidates every provision of the constitution or laws of a State which "denies or abridges" the right to vote "on account of race." See *United States* v. *Reese,* 92 U.S. 214, 217–218. Of course, State laws which, in terms, bar Negroes from the franchise fall before the Amendment. *Neal* v. *Delaware,* 103 U.S. 370, 389. But the constitutional guarantee does not end there: "The Amendment nullifies sophisticated as well as simple-minded modes of discrimination." *Lane* v. *Wilson,* 307 U.S. 268, 275. See, also, *Guinn* v. *United States,*

[80] As previously noted, § 1971(a) has at least as broad a scope as the Fifteenth Amendment. For that reason, we often speak of the challenged Mississippi provisions as "violating the Fifteenth Amendment" as a convenient shorthand for the technically more correct allegation that the offending laws are nullified by the Supremacy Clause because they conflict with § 1971(a) which, so far as here relevant, merely codifies in statutory form the guarantees of the Fifteenth Amendment.

238 U.S. 347. In short, no State rule fixing voting qualifications is insulated against the charge that it works a discrimination "on account of race." Though the fashioning of such qualifications and the implementing procedures (ignoring their effect on "federal" elections)[81] normally involve the exercise of power wholly within the domain of State interest, there is no insulation when that "power is used as an instrument for circumventing [the] federally protected right [to exemption from racial discrimination in voting]." *Gomillion* v. *Lightfoot,* 364 U.S. 339, 347. Such a charge of misuse of State authority involves "basic civil and political rights" and accordingly "must be carefully and meticulously scrutinized," *Reynolds* v. *Sims,* 377 U.S. 533, 562. In this light, we re-examine the allegations of the complaint and the theory upon which they rest.

1. The "interpretation," "citizenship" and "good moral character" tests

(*a*) In 1890, eligible Negro voters exceeded whites. To remedy that situation, a constitutional convention was called in that year, and, under circumstances

[81] Though the Mississippi voter registration provisions involved are equally applicable to "federal" and local elections, the challenge here, with two exceptions (the voting records destructions statute, alleged to be in conflict with 42 U.S. Code 1974, and the "perfect form" requirement, alleged to conflict with § 101(a) of the Civil Rights Act of 1964), is under section 1971(a), which (so far as here relevant) implements the Fifteenth Amendment's general ban on racial discrimintion in voting, rather than the congressional prerogative to "make or alter—regulations" with respect to "[t]he times, places and manner of holding elections for Senators and Representatives" (Art. I, § 4). Accordingly, there is no occasion to consider the special limitations on State laws affecting so-called "federal" elections. See cases cited in note 56, *supra.*

which we need not investigate, the convention assembled with 133 white delegates and only 1 Negro. There can be no quibble about its central purpose to disfranchise the Negro. All of the other indications already detailed to one side, we may accept the opinion of the Mississippi Supreme Court, writing in 1896 (*Ratliff* v. *Beale*, 774 Miss. 247, 266, 20 So. 865, 868):

> It is in the highest degree improbable that there was not a consistent, controlling directing purpose governing the convention by which these schemes [the adoption of various provisions intended to place political control in the hands of white persons] were elaborated and fixed in the constitution. *Within the field of permissible action under the limitations imposed by the federal constitution, the convention swept the circle of expedients to obstruct the exercise of the franchise by the Negro race.* * * * [Emphasis added.]

One of the expedients—and among the most effective—was Section 244 of the Constitution, which, in its original form, required that a voter be able to read, understand or interpret any section of the State constitution. The provision (it is charged) was designed to take advantage of the relative ignorance of the Negro, recently emerged from slavery, and, where necessary, to provide local registrars with a very flexible instrument for discrimination. At the same time, the quantity and quality of public education for the Negro, fully segregated, was kept inferior.

The plan succeeded. By 1954, all but about 5% of the Negro population of voting age were disfranchised (as compared to 63% registration for the whites) (R. 4). Though continued educational disparities played a role, the result is attributable largely to the misuse of the "interpretation" test by registrars. The requirements were often waived altogether for the white registrant; whereas the Negro was commonly required to read *and* interpret a section of the State constitution. See *Peay* v. *Cox*, 190 F. 2d 123 (C.A. 5), certiorari denied, 342 U.S. 896. But, even short of such extreme practices, the absolute discretion vested in the registrar as to which provision to use in the test, and his position as sole judge of the sufficiency of the answer, invited discrimination. The charge is that those opportunities for abuse were not wasted. And, of course, these known practices often discouraged Negroes from even attempting to register. See *United States* v. *State of Louisiana*, 225 F. Supp. 353, 397 (E.D. La.), appeal pending, No. 67, this Term; *United States* v. *Manning*, 215 F. Supp. 272, 288 (W.D. La.).

In 1955, after a previous unsuccessful effort and in response to an openly racial campaign by white Citizens Councils (disturbed by the ruling in *Peay* v. *Cox, supra,* and by a new interest on the part of the Negro community in the political process), Section 244 of the Mississippi Constitution was amended with a view to multiplying the hurdles to Negro voting registration. The provision was approved by an electorate more than 95% white. Every new applicant for registration—but not those (mostly white) already registered— was required to be able to read *and* write *and* interpret a section of the State Constitution, and

to "demonstrate a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government." The vagueness of the now mandatory "interpretation" test—as opposed to a mere literacy test—is obvious. See *Davis* v. *Schnell, supra,* 81 F. Supp. at 877–878. Cf. *United States* v. *L. Cohen Grocery Co.,* 255 U.S. 81, 89; *Cline* v. *Frink Dairy Co.,* 274 U.S. 445, 453. In light of the registrar's discretion to select from among 285 sections of the Mississippi Constitution, of widely varying complexity, and his power to judge the adequacy of the "interpretation," the opportunities for abuse were enormous. And, as the Statement details, instances of discrimination are not lacking. See, also, *United States* v. *Lynd,* 301 F. 2d 818, 822 (C.A. 5), certiorari denied, 371 U.S. 893;[82] *United States* v. *Lynd,* No. 19,576, C.A. 5, decided July 15, 1963;[83] *United States* v. *Duke,* 332 F. 2d 759, 768 (C.A. 5).[84] The test also capitalizes—in a far greater degree

[82] "Although we do not here repeat the test of the several sections given to the Negro witnesses and those given to the white witnesses, a reading of them demonstrates beyond any question that by any objective standard those supplied to the Negro applicants were longer, more complicated, and more difficult."

[83] "From April 18, 1962 through June 21, 1962, Theron C. Lynd gave Negroes more difficult sections of the Constitution to interpret than those he gave to white persons" (quoted at R. 1137).

[84] "Much more difficult sections of the Constitution were given to the Negroes to write and construe [by the registrar of Panola County, Mississippi] than those given to the white applicants." See, also, *United States* v. *Wood,* C.A. No. 1656, S.D. Miss., October 25, 1963, appeal pending No. 21212 (C.A. 5); *United States* v. *Ward,* C.A. No. 2540, S.D. Miss., temporary restraining order entered April 21, 1962, appeal pending, No. 21717 (C.A. 5); *United States* v. *Cox,* No. D–C–53–61, N.D. Miss., June 24, 1964.

than a "straight" literacy requirement would—on the inferior public education provided Negroes. Cf. *Lane* v. *Wilson, supra,* 307 U.S. at 276;[85] *Parker* v. *Franklin,* 223 F. Supp. 724 (M.D. Ala.), modified and affirmed, 331 F. 2d 8841 (C.A. 5).[86]

The license for discrimination embodied in the new "citizenship" test is even more obvious. The phrase "duties and obligations of citizenship under a constitutional form of government" is so indefinite as to be incomprehensible. A "constitutional form of government" presumably means a government with a supreme law, which all officials are bound to obey. But, obviously, the duties and obligations of a citizen under such a form of government will depend upon what is in the constitution. On the other hand, if more is meant, the answer—elusive to the legal mind—is surely not apparent even to the most intelligent layman.

As we have seen (Statement, *supra,* pp. 26–27); on the day before the Civil Rights Act of 1960 was signed into law, the Mississippi Legislature proposed

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[85] In testing procedural hurdles to registration in *Lane*, the Court noted:

"The restrictions imposed must be judged with reference to those for whom they were designed. It must be remembered that we are dealing with a body of citizens lacking the habits and the traditions of political independence and otherwise living in circumstances which do not encourage initiative and enterprise."

[86] There, the Negro plaintiff was a graduate of Alabama State College from which he had received a bachelor of arts degree. He sought admission to Auburn University—an Alabama State institution—in order to obtain a master's degree, but was refused admission solely on the grounds that he had not obtained

the provision that was to become Section 241–A of the Mississippi Constitution, requiring an applicant for voting registration to satisfy the registrar that he is a person "of good moral character." The allegation is that this obviously vague standard was designed to offer registrars a further instrument for discrimination. The timing and the setting of the new provision support the charge. As implemented by later legislation (Miss. Code, §§ 3213, 3209.6, 3212.5), the requirement is expressly waived for those previously

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his undergraduate degree from an accredited educational institution. Alabama State College was one of only two state colleges at which Negroes were permitted to attend. Neither was accredited. The other seven state-operated colleges were all accredited but refused to admit Negroes. The defendant argued that the requirement of graduation from an accredited institution was a non-discriminatory and necessary educational standard. But the district court rejected this reasoning, stating 223 F. Supp. at 726:

"* * * the State of Alabama has denied to Harold A. Franklin, a Negro—solely because he is a Negro—the opportunity to receive an undergraduate education at an accredited state college or university; * * *. On its face, and standing alone, the requirement of Auburn University concerning graduation from an accredited institution as a prerequisite to being admitted to Graduate School is unobjectionable and a reasonable rule for a college or university to adopt. However, the effect of this rule upon Harold A. Franklin—an Alabama Negro—and others in his class * * * is necessarily to preclude him from securing a postgraduate education at Auburn University solely because the State of Alabama discriminated against him in its undergraduate schools. Such racial discrimination on the part of the State of Alabama amounts to a clear denial of the equal protection of the laws. This is true regardless of the good motives or purposes that Auburn University may have concerning the rule in question."

registered, most of whom are whites. The allegation is that, whatever its validity in other contexts, the qualification—wholly undefined as it is here[87]—announces too indefinite a standard, too susceptible of abuse, to stand as a valid restriction on the precious right of the franchise.[88]

We have already detailed the package of legislation enacted in 1962 (see Statement, *supra*). Here, too, the charge is that these measures were designed to facilitate discrimination and discourage Negro applicants. And, again, the tendered proof shows how effectively they were so used.

One of the new provisions, in effect, requires the applicant to complete a letter-perfect form without

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[87] The complaint alleges that the "good moral character" requirement enables and requires the registrars of voters in Mississippi to determine, without reference to any objective criteria (a) what acts, practices, habits, customs, beliefs, relationships, moral standards, ideas, associations, attitudes and demeanor contitute evidence of bad moral character, and what weight should be given to each: (b) what constitutes evidence of good moral character, and what weight should be given to such factors as school record, church membership, military service, club memberships, and personal, social, and family relationship, civic interest and absence of a criminal record; (c) whether the applicant's entire life, or only his recent history, is to be considered, and (d) what sources, if any, such as public records, public officials, or private individuals (Negro and white) will be consulted in determining the character of the applicant, or whether the determination will be made on the basis of personal knowledge, impression, newspaper accounts, rumor or otherwise (R. 12).

[88] Note, 47 Col. L. Rev. 1144, 1146: "the good moral character requirement, while definite enough in fields where no specific constitutional mandate exists, may here be objectionable because of * * * [its] failure to establish a sufficiently precise standard for enforcement."

assistance (§ 3213, as amended), while another prohibits the registrar from divulging the error (other than lack of good moral character) on which the rejection is grounded (§ 3212.5). The potential for discrimination in such a procedure is self-evident.[89]

(*b*) The provisions just discussed invite discrimination by those responsible for their administration, either by delegating authority in vague and indefinite terms, or by permitting registrars to disqualify applicants for formal, technical or inconsequential errors. It is charged, moreover, that they are designed and calculated to achieve that result and that in fact they have been systematically employed to that end for a period of years, if not generations. There can be no quarrel with the proposition that individual officials who have engaged in particular instances of discrimination in exercising the broad authority conferred upon them by such laws may be required to desist from future acts of discrimination. So much is indeed acknowledged in the opinion of the majority below (R. 1547). There remains for consideration this question: If, as charged, the underlying laws themselves are the root of the discrimination, may the dis-

[89] We also point out that the "perfect form" requirement now conflicts with Section 101(a) of the Civil Rights Act of 1964, which forbids a denial of voting rights because of errors or omission on the registration form which are "not material in determining whether such individual is qualified under State law to vote * * *." Since "the case must be decided on the basis of the law now controlling," *United States* v. *Alabama*, 362 U.S. 602, the district court should be directed on remand to permit the complaint to be amended so as to allege a conflict between Section 3213 and the Civil Rights Act of 1964, and to strike down the State provision to the extent of the inconsistency.

trict court entertain a proceeding against the State—one which seeks to enjoin it and its subordinate officials from continuing to proceed under those laws, and thus to extirpate root and branch the long flourishing system of discrimination?

Our answer is that if the government makes the showing foreshadowed in its complaint, it will become the district court's duty to condemn the underlying provisions of law (not merely instances of discrimination by particular local officials) and to enjoin their enforcement. Where a statute can be seen to breed and sanction official discrimination, because its generalities invite disparate treatment, or where the regular and generalized course of administration by the State's officers has long given it an accepted meaning which renders it incompatible with constitutional guarantees, the remedy must reach the cause.

The rule is well established that a statute or ordinance is invalid if it invests an administrator with uncanalized discretion to grant or deny fundamental rights. *Lovell* v. *Griffin*, 303 U.S. 444, (distribution of literature); *Schneider* v. *State*, 308 U.S. 147 (door to door solicitation); *Niemotko* v. *Maryland*, 340 U.S. 268 (use of park for public meetings). Recently, in *Staub* v. *City of Baxley*, 355 U.S. 313, the Court applied the rule to an ordinance which prohibited soliciting members for a labor organization without a license from the Mayor and Council who, in passing upon an application, were to consider (*id.* at 315) "the character of the applicant, the nature of the business of the organization for which members are desired to be solicited, and its effects upon the general welfare of the

citizens." In invalidating the ordinance the Court said (355 U.S. at 322):

> It is settled by a long line of decisions of this Court that an ordinance which, like this one, makes the peaceful enjoyment of freedoms which the Constitution guarantees contingent upon the uncontrolled will of an official * * * is an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms.

The principle is neither new nor confined to cases under the First Amendment. Cf. *Chy Lung* v. *Freeman*, 92 U.S. 275. It was applied eighty years ago to municipal ordinances vesting in administrative authorities an arbitrary discretion to license or refuse to license the conduct of a laundry business. In *Yick Wo* v. *Hopkins*, 118 U.S. 356, the Court invalidated, partly upon this ground, an ordinance of San Francisco calling for the licensing of laundries. It quoted with approval from *City of Baltimore* v. *Radecke*, 49 Md. 217, where the Maryland Court of Appeals had struck down as invalid on its face a similar ordinance applicable to the use of steam engines (118 U.S. at 372–373):

> It [the ordinance in question] lays down no *rules* by which its *impartial execution* can be secured or partiality and oppression prevented * * * when we remember that this action or non-action may proceed from enmity or prejudice, from partisan zeal or animosity, from favoritism and other improper influences and motives easy of concealment and difficult to be detected and exposed, it becomes unnecessary to suggest or comment upon the injustice capable of being brought under cover of such a

> power, for that becomes apparent to every one who gives to the subject a moment's consideration. In fact, an ordinance which clothes a single individual with such power hardly falls within the *domain of law,* and we are constrained to pronounce it inoperative and void.

The principle is also applicable to voting rights. See *Williams* v. *Mississippi,* 170 U.S. 213, 224–225; *Davis* v. *Schnell,* 81 F. Supp. 872, 877–878, affirmed, 336 U.S. 933; *United States* v. *Louisiana,* 225 F. Supp. 353, 387. And it is enough to condemn the Mississippi voting laws. When the registrar is free to choose from the 285 sections of the Mississippi Constitution of widely varying complexity the test which he will put to a particular applicant and then to judge whether the applicant's understanding and interpretation are satisfactory, the registrar exercises virtually untrammeled power to qualify or disqualify prospective voters at will. The new "citizenship" test requiring the registrant to demonstrate an understanding of the "duties and obligations of citizenship under a constitutional form of government" serves to enlarge the power of the registrar still further, for the sufficiency of any demonstration within the wide range of conceivable extremes is left wholly to the registrar's discretion. Similarly, the test of "good moral character," as applied to voting, leaves excessive scope for judgment.

Nor does the possibility that a case might arise in which mandamus would lie against the registrar prove that the standards are sufficient, as the court below

supposed (R. 1552). The question is not whether the power is absolute, but whether it is sufficiently governed by law to protect the fundamental right to vote against arbitrary or invidious discrimination.

In the present case, however, as in *Yick Wo* v. *Hopkins* (118 U.S. at 373), "we are not obliged to reason from the probable to the actual, and pass upon the validity of the ordinances complained of, as tried merely by the opportunities which their terms afford, of unequal and unjust discrimination in their administration." For, here as there, "the cases present the ordinances in actual operation, and the facts shown establish an administration directed so exclusively against a particular class of persons as to warrant and require the conclusion, that, whatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their administration, and thus representing the State itself, with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws which is secured to the petitioners, as to all other persons, by the broad and benign provisions of the Fourteenth Amendment to the Constitution of the United States."

Such was the case made by the goverment's complaint against Mississippi, the proof of which is foreshadowed by the answers to interrogatories. See pp. 10–33, *supra*. The difference is only that we deal with the Fifteenth Amendment and the right to vote—the most fundamental of all rights—rather than the Fourteenth and carrying on a business. But since the

difference makes our case the stronger, the conclusion of the Court is squarely applicable (118 U.S. at 373–374):

> Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution.

While it has been suggested by the court below that *Yick Wo* left unaffected the San Francisco ordinance and only proscribed its unconstitutional administration, that conclusion seems wrong. At least, this Court has consistently read it as we do. See *Williams* v. *Mississippi*, 170 U.S. 213, 224;[90] *Atchison, Topeka & Sante Fe Railroad Co.* v. *Matthews*, 174 U.S. 96, 105;[91] *Home Tel. & Tel. Co.* v. *Los Angeles*,[92] 227 U.S.

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[90] "The ordinances were attacked as being void on their face, and as being within the prohibition of the Fourteenth Amendment, but even if not so, that they were void by reason of their administration. *Both contentions were sustained* (emphasis added)."

[91] "In that case [*Yick Wo*] a municipal ordinance of San Francisco designed to prevent the Chinese from carrying on the laundry business was adjudged void."

[92] "In *Yick Wo* v. *Hopkins*, 118 U.S. 356, the enforcement of certain city ordinances was prohibited on the grounds that they were within the reach of the Fourteenth Amendment. The court, reiterating the doctrine of *Virginia* v. *Rives* and *Ex Parte Virginia*, held that this conclusion was sustained from a two-fold point of view—first, the terms of the ordinances and second, in any event from the discriminatory manner in which the ordinances were applied by the officers."

278, 291; *Gudling* v. *Chicago*, 177 U.S. 183, 186–187.[93]

We recognize that the unauthorized action of one or more officials is not alone enough to invalidate a statute fair on its face, but that principle, upon which the court below relied, is inapplicable to the present case for several reasons.

In the first place, as we have just shown (pp. 76–78), the statutes in question could well be held void on their face because of the excessive delegation of virtually untrammelled control of the franchise.

Second, we are not dealing with the conduct of one or two officials or the isolated acts of a larger number. The case made in the complaint is one of systematic discrimination on a broad front for two or three generations. The practice would have written meaning into the State constitution and statutes even if it were not there from the beginning. It demonstrates that the power given to the registrars is in fact as arbitrary as one would infer from the words.[94]

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[93] See, also, *Crowley* v. *Christensen*, 137 U.S. 86, 94; *Fong Yue Ting* v. *United States*, 149 U.S. 698, 725, 739, 762; *Plessy* v. *Ferguson*, 163 U.S. 537, 550; *United States* v. *Wong Kim Ark*, 169 U.S. 649, 694–695; *Goriеb* v. *Fox*, 274 U.S. 603, 607–608.

[94] A like principle governs in other areas. With respect to discrimination in rates, this Court said in *Nashville, C. & St. L. Ry.* v. *Browning*, 310 U.S. 362, 369:

"Here, according to petitioner's own claim, all the organs of the state are conforming to a practice, systematic, unbroken for more than forty years, and now questioned for the first time. It would be a narrow conception of jurisprudence to confine the notion of 'laws' to what is found written on the

Third, other provisions in the Mississippi constitution and statutes are themselves so obviously calculated to work discrimination against Negroes as to compel the conclusion that the vague phrases relating to understanding and interpretation, the duties of a citizen and good moral character were intended to be used as part of a program for defeating rights under the Fifteenth Amendment. This is true of the 1890, 1955 and 1960 Constitutional amendments. Thus, as the Mississippi Supreme Court itself noticed a few years later (*Ratliff* v. *Beale, supra,* 74 Miss. 247 at 266), the 1890 constitutional convention "swept the circle of expedients to obstruct the exercise of suffrage by the negro race" and intentionally "discriminate[d] against its characteristics," among other things, by selecting as disqualifying crimes "the offenses to which its criminal members are prone." Because Negroes were thought "given rather to furtive offenses than to the robust crimes of the whites," *id.* at 266, the constitution bars from the franchise those convicted of bribery, burglary, theft, arson, perjury, forgery, embezzlement and bigamy, but not armed robbers or rapists or murderers. See Miss. Const., Section 241; see, also, Section 253. And, at the other end of the history are the publication and challenge

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statute books, and to disregard the gloss which life has written upon it. Settled state practice cannot supplant constitutional guarantees, but it can establish what is state law. The Equal Protection Clause did not write an empty formalism into the Constitution. Deeply embedded traditional ways of carrying out state policy, such as those of which petitioner complains, are often tougher and truer law than the dead words of the written text."

provisions enacted in 1962 which are plainly calculated to inhibit the registration of Negroes by advertising their applications and exposing them to harassment and intimidation (*infra*, pp. 90–91).

Finally, it is plain that the practical administration of the statute conformed to the original intent. As we have already seen (*supra*, pp. 20–22), the charge (often substantiated by the specific findings of federal courts) is that the "interpretation" test, once applied only to Negro applicants, has been administered unfairly, Negroes being generally given more difficult portions of the State constitution to construe and being judged far more critically on their answers. And similar discrimination in fact is alleged with respect to the grading of the "citizenship" test and the standards used to determine "good moral character."

Under these circumstances the Mississippi constitution and statutes cannot be divorced from the systematic violation of Fifteenth Amendment rights of which they are the source. Not only the discriminatory practices but any steps under the laws conferring such flexible and arbitrary power should therefore be enjoined.[35]

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[35] An analogous rule often governs questions of relief. For instance, the fact that methods of doing business used by the defendants could have been lawfully used does not save them from condemnation when in fact they have been employed, together with other practices, to achieve forbidden ends. *United States* v. *Crescent Amusement Co.*, 323 U.S. 173, 188; *United States* v. *United States Gypsum Co.*, 340 U.S. 76, 89; *United States* v. *Bausch & Lomb Co.*, 321 U.S. 707, 724; *Swift & Co.* v. *United States*, 276 U.S. 311.

2. The records destruction statute and the publication and challenge provisions

(*a*) In 1960, also, and (it is charged) with a view to the imminent passage of the Civil Rights Act of 1960, the Mississippi legislature adopted a measure expressly permitting local registrars to destroy records which, formerly, they were required to keep (Miss. Code, § 3209.6). Plainly, the allegation of impermissible purpose is not unreal in light of the demonstrated importance of records in proving discrimination. But, in any event, the statute falls as contrary to the national law, 42 U.S.C. 1974. Although the Mississippi statute does not command disobedience of the federal law, there can be no doubt that it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines* v. *Davidowitz,* 312 U.S. 52, 67; *Hill* v. *Florida,* 325 U.S. 538; cf. *Colorado Anti-Discrimination Commission* v. *Continental Air Lines,* 372 U.S. 714, 722. The open encouragement which the local provision, on its face, gives to disregard of the federal law, and the charge of the complaint that records have actually been destroyed under the supposed authority of the State law, make clear that the allegation of conflict is substantial.

(*b*) Finally, one of the most obviously offensive provisions of the 1962 package is the requirement for publication of the names of applicants for voting registration, combined with an invitation to the public to challenge their qualifications (Miss. Code, §§ 3212.7, 3217–01 through 3217–15). We need hardly expatiate on the inhibiting effect of such a system,

in the light of the instances of intimidation and reprisal already recited (Statement, *supra*, —) and the notorious "private attitudes and pressures"—which courts may properly notice[96] (*Anderson* v. *Martin*, 375 U.S. 399, 403; *NAACP* v. *Alabama*, 357 U.S. 449, 463), indeed, cannot ignore (*NAACP* v. *Button*, 371 U.S. 415, 435–436). See, also, *Bates* v. *Little Rock*, 361 U.S. 516; *Louisiana* v. *NAACP*, 366 U.S. 293, 296; *Gibson* v. *Florida*, 372 U.S. 539; cf. *Shelton* v. *Tucker*, 364 U.S. 479, 487.

We conclude that a cause of action has been fully stated, and that, if more were needed, the likelihood of very substantial proof has been demonstrated.

C. THE RIGHT TO RELIEF UPON PROOF OF THESE CHARGES

Of course, if the government prevails in its challenge to the Mississippi constitutional and statutory provisions involved, it will be entitled to a judgment declaring them unconstitutional and enjoining their enforcement throughout the State. Since the availability of *some* relief is sufficient to sustain the claim against a

[96] See United States Commission on Civil Rights, Interim Report on Mississippi, April 16, 1963. In its 1961 Report on voting, the Commission had reported that methods of disfranchisement of Negroes in 14 Mississippi counties studied by the Commission included economic and physical reprisals. Wiley Branton, director of the Voter Registration Project sponsored by the Southern Regional Council charged in March 1963 that Mississippi used "economic pressures, threats, coercion, physical violence and death" to deter Negro registration efforts. See Silver, *The Closed Society*, pp. 91–92. See, also, Report on Mississippi by the Mississippi Advisory Committee to the United States Commission on Civil Rights, January 1963, p. 23; "Law Enforcement in Mississippi" (Special Report of the Southern Regional Council on Mississippi).

motion to dismiss, there would normally be no occasion, at this stage, to consider whether *additional* relief will also be appropriate if the government prevails on the merits. We pursue the question briefly, however, because of the intimations in the majority opinion below that the judgment prayed for could, in no event, be properly entered.

1. "Frecze" of the registration standards

The complaint alleges that most white voters have, in fact, been exempted from the onerous tests and requirements here challenged—either because those provisions were enacted after they had permanently registered, or because they were illegally waived in their case—and that they have obtained a lifetime voting license on satisfying the fundamental requirements (not here attacked) of age, residence, literacy, sanity and absence of conviction of any disqualifying crime. Accordingly, the prayer is that Negroes be permitted to qualify on the same terms, and an injunction is sought to prevent—unless reregistration is required of all—the imposition of any new requirement for registration.

There can be no question of the power of the district court to enter such an order. Its duty is "to do equity and to mould each decree to the necessities of the particular case." *Hecht Co.* v. *Bowles*, 321 U.S. 321, 329; *Porter* v. *Warner Co.*, 328 U.S. 395, 398; *State of Alabama* v. *United States*, 304 F. 2d 583, 591 (C.A. 5), affirmed per curiam, 371 U.S. 37; *United States* v. *State of Louisiana*, 225 F. Supp. 353, 396 (E.D. La.), appeal pending No. 67, this Term. Nor

is there any real doubt as to the appropriateness of the remedy for a situation like that alleged here. There is no novelty in the practical solution of requiring a waiver of the law for all when some have been illegally exempted. *E.g., Iowa-Des Moines National Bank* v. *Bennett,* 284 U.S. 239. Cf. *Nashville, C. & St. L. Ry.* v. *Browning,* 310 U.S. 362; *United States* v. *Bausch and Lomb Co.,* 321 U.S. 707; *United States* v. *Gypsum Co.,* 340 U.S. 76; *Ethyl Gasoline Corp* v. *United States,* 309 U.S. 436, 461. And, in the area of voting rights, decrees relieving from the effect of past discrimination "frozen" into a new law have been common since *Guinn* v. *United States,* 238 U.S. 347. See, also, *Lane* v. *Wilson,* 307 U.S. 268, 275–276.[97] In recent years, the courts of the Fifth Circuit have repeatedly enjoined the use of more burdensome tests or stricter standards than those imposed on white voters still eligible to vote. *E.g., United States* v. *Duke,* 332 F. 2d 759, 768 (C.A. 5); *United States* v.

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[97] In *Lane*, the Court stated (307 U.S. at 275–276):

"Section 5652 of the Oklahoma statutes makes registration a prerequisite to voting. By §§ 5654 and 5659 all citizens who were qualified to vote in 1916 but had not voted in 1914 were required to register, save in the exceptional circumstances, between April 30 and May 11, 1916, and in default of such registration were perpetually disenfranchised. Exemption from this onerous provision was enjoyed by all who had registered in 1914. But this registration was held under the statute which was condemned in the *Guinn* case. *Unfair discrimination was thus retained by automatically granting voting privileges for life to the white citizens whom the constitutional 'grandfather clause' had sheltered while subjecting colored citizens to a new burden*" (emphasis added).

Cf. *Lassiter* v. *Northampton Election Board,* 360 U.S. 45, 49–50.

Dogan, 314 F. 2d 767, 772–773 (C.A. 5); *United States* v. *Lynd*, 301 F. 2d 818, 823 (C.A. 5), certiorari denied, 371 U.S. 893; *United States* v. *Louisiana*, 225 F. Supp. 353, 393 (E.D. La.), pending on appeal, No. 67, this Term; *United States* v. *Penton*, 212 F. Supp. 193, 200 (M.D. Ala). See, also, *United States* v. *Cox*, No. D.C.–53–61, N.D. Miss., June 24, 1964. It is obviously irrelevant whether new and more stringent requirements are devised by the local registrar or the State legislature. In either event, if they exempt a substantial number of present voters registered under more relaxed standards, their application to future applicants should be enjoined. There is in this no usurpation of the State's prerogative to fix the qualifications for voting. For, so long as it treats all alike—by requiring re-registration under the new standards—the State would remain free to enact any non-discriminatory provisions it thought proper.

2. "Pattern or practice" relief under Section 1971(e)

The government seeks a finding that the acts complained of have been "pursuant to a pattern or practice" within the meaning of 42 U.S.C. 1971(e), *infra*, p. 100. Such a finding is the necessary predicate for summary relief from further discrimination affecting members of the same class and, where appropriate, the appointment of federal referees for that purpose. See *United States* v. *Manning*, 215 F. Supp. 272 (W.D. La.).

To be sure, this is not the typical "pattern or practice" case. Previous suits by the United States

in which Section 1971(e) was invoked involved only individual registrars who consistently discriminated against Negro applicants. *E.g., United States* v. *Manning, supra; United States* v. *Mayton,* 335 F. 2d 153 (C.A. 5); *United States* v. *Duke,* 332 F. 2d 759 (C.A. 5). But the broader scope of the present action does not make Section 1971(e) relief inappropriate here. On the contrary, if the allegations of the complaint are proved, it is difficult to conceive how the court could fail to find a "pattern or practice" of discrimination, and the statewide decree would most probably suggest invoking the special relief provisions.

As we have already noted (*supra,* p. 53), the legislative history of Section 1971(e) makes it clear that "a single act such as the enactment of a statute directed at Negroes would in itself constitute a pattern or practice of discrimination." 106 Cong. Rec. 7767.[98] Nor is there any jurisdictional or practical obstacle. Whether or not the requisite finding would normally be entered by a statutory court of three

[98] The statute provides that if the court makes a finding of a pattern or practice, any person of the same race or color who is resident "within the affected area" may apply for an order declaring him qualified to vote. The statute defines "affected area" as meaning "any subdivision of the State in which the laws of the State relating to voting are or have been to any extent administered by a person found in the proceeding to have violated subsection (a) of this section." But this language does not bar a finding that there has been a pattern or practice of discrimination in the collective subdivisions of a state. The legislative history shows that Congress' concern focused on the existence of established policies of discrimination, wherever they might have occurred.

judges,[99] it is settled that such a court—once properly convened—may properly decide all issues in the case. *Florida Lime and Avocado Growers v. Jacobsen*, 362 U.S. 73.

CONCLUSION

Almost one hundred years ago, it was decreed that "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." The State of Mississippi complied to the extent of removing explicit racial barriers to the exercise of the franchise. But, it is charged, she erected and maintained other obstacles to the Negro's exercise of the franchise—obstacles which have been raised, rather than lowered, over the years. Though it has long been clear that "[t]he Fifteenth Amendment nullifies sophisticated as well as simple-minded modes of discrimination," the bald fact is that most Negroes residing in the State have been excluded from elections for three-quarters of a century. A suit has now been brought by the United States, pursuant to an express authorization of the Congress, calling into question the laws and practices under which this has taken place. The charges are detailed and the issues are of fundamental importance in a democratic society.

[99] Section 1971(e) is expressly applicable to "any proceeding instituted pursuant to subsection (c) [of section 1971]" to enforce subsection (a) rights and subsection (d) of section 1971 grants to the district courts jurisdiction of "proceedings instituted pursuant to this section." The language of the statute does not limit such proceedings to single-judge district courts.

Section 3213 of the Mississippi Code (as amended by Chapter 570 of the Mississippi Laws of 1962), which requires rejection of an applicant for registration for errors or omissions that are not material in determining voting qualification is, on its face, clearly contrary to Section 101(a) of the Civil Rights Act of 1964 and, accordingly, should now be held unconstitutional.[100]

Section 3209.6 of the Mississippi Code, which permits the destruction of voting records, is, on its face, plainly contrary to Title III of the Civil Rights Act of 1960 (42 U.S.C. 1974), and, accordingly, should now be held unconstitutional.

Sections 3212.7 and 3217-01 through 3217-15 (as added by Chapters 572 and 573 of the Mississippi Laws of 1962), which require publication of the names of applicants for registration and invite voters to challenge their qualifications, in light of the conditions prevailing in Mississippi of which this Court may take judicial notice, plainly inhibit the exercise of the franchise by Negroes, and, accordingly, may now be ripe for adjudication.

While the remaining constitutional and statutory provisions are vulnerable on their face under a strict application of the doctrine announced in *City of Baltimore* v. *Radecke* and *Yick Wo* v. *Hopkins, supra,* the theory of the complaint was that their invalidity would be more fully established when examined in the

[100] Technically, it may be necessary for the district court first to permit the government to amend its complaint so as to allege the conflict. But that formality should not prevent this Court from now determining the issue.

light of the constant and generalized discrimination practiced under them, and, accordingly, we do not urge that the constitutionality of these provisions be decided prior to trial.

The judgment below should be reversed and the case remanded with appropriate instructions.

Respectfully submitted.

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APPENDIX A

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States:

ARTICLE VI

[Clause 2.] This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

* * * * *

AMENDMENT XV

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

* * * * *

Federal Statutes:

42 U.S.C. 1971:

(a) All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude;

any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

* * * * *

(c) [Supp. V] Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. In any proceeding hereunder the United States shall be liable for costs the same as a private person.

Whenever, in a proceeding instituted under this subsection any official of a State or subdivision thereof is alleged to have committed any act or practice constituting a deprivation of any right or privilege secured by subsection (a) of this section, the act or practice shall also be deemed that of the State and the State may be joined as a party defendant and, if, prior to the institution of such proceeding, such official has resigned or has been relieved of his office and no successor has assumed such office, the proceeding may be instituted against the State.

(d) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

(e) [Supp. V] In any proceeding instituted pursuant to subsection (c) of this section in the event the court finds that any person has been deprived on account of race or color of any

right or privilege secured by subsection (a) of this section, the court shall upon request of the Attorney General and after each party has been given notice and the opportunity to be heard make a finding whether such deprivation was or is pursuant to a pattern or practice. If the court finds such pattern or practice, any person of such race or color resident within the affected area shall, for one year and thereafter until the court subsequently finds that such pattern or practice has ceased, be entitled, upon his application therefor, to an order declaring him qualified to vote, upon proof that at any election or elections (1) he is qualified under State law to vote, and (2) he has since such finding by the court been (a) deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote, or (b) found not qualified to vote by any person acting under color of law. Such order shall be effective as to any election held within the longest period for which such applicant could have been registered or otherwise qualified under State law at which the applicant's qualifications would under State law entitle him to vote.

Notwithstanding any inconsistent provision of State law or the action of any State officer or court, an applicant so declared qualified to vote shall be permitted to vote in any such election. The Attorney General shall cause to be transmitted certified copies of such order to the appropriate election officers. The refusal by any such officer with notice of such order to permit any person so declared qualified to vote to vote at an appropriate election shall constitute contempt of court.

An application for an order pursuant to this subsection shall be heard within ten days, and the execution of any order disposing of such application shall not be stayed if the effect of such stay would be to delay the effec-

tiveness of the order beyond the date of any election at which the applicant would otherwise be enabled to vote.

The court may appoint one or more persons who are qualified voters in the judicial district, to be known as voting referees, who shall subscribe to the oath of office required by section 16 of Title 5, to serve for such period as the court shall determine, to receive such applications and to take evidence and report to the court findings as to whether or not at any election or elections (1) any such applicant is qualified under State law to vote, and (2) he has since the finding by the court heretofore specified been (a) deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote, or (b) found not qualified to vote by any person acting under color of law. In a proceeding before a voting referee, the applicant shall be heard ex parte at such times and places as the court shall direct. His statement under oath shall be prima facie evidence as to his age, residence, and his prior efforts to register or otherwise qualify to vote. Where proof of literacy or an understanding of other subjects is required by valid provisions of State law, the answer of the applicant, if written, shall be included in such report to the court; if oral, it shall be taken down stenographically and a transcription included in such report to the court.

Upon receipt of such report, the court shall cause the Attorney General to transmit a copy thereof to the State attorney general and to each party to such proceeding together with an order to show cause within ten days, or such shorter time as the court may fix, why an order of the court should not be entered in accordance with such report. Upon the expiration of such period, such order shall be entered unless prior to that time there has been filed with the court and served upon all parties

a statement of exceptions to such report. Exceptions as to matters of fact shall be considered only if supported by a duly verified copy of a public record or by affidavit of persons having personal knowledge of such facts or by statements or matters contained in such report; those relating to matters of law shall be supported by an appropriate memorandum of law. The issues of fact and law raised by such exceptions shall be determined by the court or, if the due and speedy administration of justice requires, they may be referred to the voting referee to determine in accordance with procedures prescribed by the court. A hearing as to an issue of fact shall be held only in the event that the proof in support of the exception disclose the existence of a genuine issue of material fact. The applicant's literacy and understanding of other subjects shall be determined solely on the basis of answers included in the report of the voting referee.

The court, or at its direction the voting referee, shall issue to each applicant so declared qualified a certificate identifying the holder thereof as a person so qualified.

Any voting referee appointed by the court pursuant to this subsection shall to the extent not inconsistent herewith have all the powers conferred upon a master by rule 53(c) of the Federal Rules of Civil Procedure. The compensation to be allowed to any persons appointed by the court pursuant to this subsection shall be fixed by the court and shall be payable by the United States.

Applications pursuant to this subsection shall be determined expeditiously. In the case of any application filed twenty or more days prior to an election which is undetermined by the time of such election, the court shall issue an order authorizing the applicant to vote provisionally: *Provided, however,* That such applicant shall be qualified to vote under State law.

In the case of an application filed within twenty days prior to an election, the court, in its discretion, may make such an order. In either case the order shall make appropriate provision for the impounding of the applicant's ballot pending determination of the application. The court may take any other action, and may authorize such referee or such other person as it may designate to take any other action, appropriate or necessary to carry out the provisions of this subsection and to enforce its decrees. This subsection shall in no way be construed as a limitation upon the existing powers of the court.

When used in this subsection, the word "vote" includes all action necessary to make a vote effective including, but not limited to, registration or other action required by State law prerequisite to voting, casting a ballot, and having such ballot counted and included in the appropriate totals of votes cast with respect to candidates for public office and propositions for which votes are received in an election; the words "affected area" shall mean any subdivision of the State in which the laws of the State relating to voting are or have been to any extent administered by a person found in the proceeding to have violated subsection (a) of this section; and the words "qualified under State law" shall mean qualified according to the laws, customs, or usages of the State, and shall not, in any event, imply qualifications more stringent than those used by the persons found in the proceeding to have violated subsection (a) of this section in qualifying persons other than those of the race or color against which the pattern or practice of discrimination was found to exist.

* * * * *

42 U.S.C. 1974:

> Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico are voted for, all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election, except that, when required by law, such records and papers may be delivered to another officer of election and except that, if a State or the Commonwealth of Puerto Rico designates a custodian to retain and preserve these records and papers at a specified place, then such records and papers may be deposited with such custodian, and the duty to retain and preserve any record or paper so deposited shall devolve upon such custodian. Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than $1,000 or imprisoned not more than one year, or both.

* * * * *

Civil Rights Act of 1964 (P.L. 88-352), Section 101(a) (amending 42 U.S.C. 1971(a)):

* * * * *

> (2) No person acting under color of law shall

* * * * *

(B) deny the right of any individual to vote in any Federal election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election

* * * * * *

Constitution of the State of Mississippi (1 Mississippi Code Ann.):

§ 241–A. [Supp.] In addition to all other qualifications required of a person to be entitled to register for the purpose of becoming a qualified elector, such person shall be of good moral character.

The Legislature shall have the power to enforce the provisions of this section by appropriate legislation.

§ 244. Every elector shall, in addition to the foregoing qualifications be able to read and write any section of the Constitution of this State and give a reasonable interpretation thereof to the county registrar. He shall demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government.

The person applying to register shall make a sworn, written application for registration on a form to be prescribed by the state board of election commissioners, exhibiting therein the essential facts and qualifications necessary to show that he is entitled to register and vote, said application to be entirely written, dated and signed by the applicant in the presence of the county registrar, without assistance or suggestion from any person or memorandum whatever; provided, however, that if the applicant is unable to write his application by reason of physical disability, the same, upon his oath of

such disability, shall be written at his unassisted dictation by the county registrar.

Any new or additional qualifications herein imposed shall not be required of any person who was a duly registered and qualified elector of this state prior to January 1, 1954.

The Legislature shall have the power to enforce the provisions of this section by appropriate legislation.

Mississippi Statutes: Mississippi Code, Section 3209.6, as amended, 1962:

The state board of election commissioners shall, as soon as practicable and thereafter at such times as it may deem advisable, consistent with the Constitution, prepare a series of application blanks, including the oath of the person offering to register, in compliance with Section 242 of the Constitution of this state, and including blank forms for furnishing of information, showing date of application, which shall be the date of registration if such applicant be approved for registration; name of applicant; age; occupation; where business carried on; if employed, by whom; place of residence; date such residence began; previous place of residence; what oath applicant takes; if more than one person of the same name in precinct, by what name applicant wishes to be called: whether applicant has been convicted, and if so, when and where, of any of the crimes referred to in Section 241 of the Constitution of Mississippi, which are bribery, theft, arson, obtaining money under false pretenses, perjury, forgery, embezzlement and bigamy, and the moral character of applicant; all designed to test the ability of applicants for registration to vote to read and write any section of the Constitution of this state and give a reasonable interpretation thereof, and demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under

a constitutional form of government; and to demonstrate to the county registrar that applicant is a person of good moral character as required by Section 241–A of the Constitution of Mississippi. Such applications shall be designed to exhibit the essential facts and qualifications necessary to show that such person is entitled to register and vote. Copies of such application blank forms shall be delivered to the county registrar of each county, and such copies shall be supplied to each county registrar as needed. The oath required by Section 242 of the Constitution shall be administered by the registrar. The board of supervisors is authorized to make proper allowances for office supplies reasonably necessary by this act.

If no appeal has been or is taken as provided by law from the ruling of the registrar upon any application for registration, or if any application for registration is abandoned or waived by the applicant therein by making another application for registration before any final judgment or decision has been rendered on any prior application, or otherwise waived or abandoned same, the registrar is not required to retain or preserve any record made under the provisions hereof.

Mississippi Laws 1962; Chapter 570 (formerly House Bill 900, now incorporated in Miss. Code, § 3213):

§ *1.* **Person not to register unless he can read and write.** A person shall not be registered unless he be able to read and write any section of the constitution of this state and give a reasonable interpretation thereof to the county registrar. He shall demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government; he shall also demonstrate to the county registrar that he is a person of good moral character.

The person applying to register shall make a sworn, written application for registration on a form prescribed by the state board of election commissioners, exhibiting therein the essential facts and qualifications necessary to show that he is entitled to register and vote, said application to be entirely written, dated and signed by the applicant in the presence of the county registrar, without assistance or suggestion from any person or memorandum whatever; provided, however, that if the applicant is unable to write his application by reason of physical disability, the same, upon his oath of such disability, shall be written at his unassisted dictation by the county registrar. As originally enacted each provision is and it is further declared to be mandatory and not directory; no application should have been and shall not be approved or the applicant declared qualified to register to vote unless all blank spaces in the application and the oath are properly and responsively filled out by the applicant; and the oath, as such, shall be signed by the applicant; and the application, as such, shall be signed separately by the applicant at the places thereon provided for applicant's signature.

Provided, however, the provisions herein imposed shall not be required of any person who was a duly registered and qualified elector of this state prior to January 1, 1954; except that from and after the effective date of this act no person shall be permitted to register unless he demonstrates to the county registrar that he is of good moral character as required by the provisions of § 241–A of the Constitution of Mississippi.

§ 2. Should any provision of this act be held to be unconstitutional or otherwise invalid for any reason, such holding shall not be construed to affect the validity of any other part or portion of this act.

* * * * *

Mississippi Laws 1962, Chapter 571 (formerly House Bill 903, now incorporated in Miss. Code, § 3212.5):

§ 1. When the registrar shall have determined that an applicant to register to vote has qualified to register under the Constitution and laws of the State of Mississippi, he shall endorse upon the application the word "passed," or a word or words of equivalent meaning, and the applicant shall be entitled to register upon his request for registration made in person to the registrar, or deputy registrar, if a deputy registrar has been appointed. As is now required by law, no person other than the registrar or a deputy registrar shall register any applicant. It shall be the responsibility of an applicant for registration to make inquiry of the registrar, or the deputy registrar, if a deputy registrar has been appointed, to determine whether such applicant has passed and is qualified to register.

§ 2. If applicant be of good moral character, but has not otherwise complied with the Constitution and laws of this state to entitle him to vote, then the registrar shall endorse upon the application the word "failed," without specifying the reason or reasons therefor, as so to do may constitute assistance to the applicant on another application.

§ 3. If applicant is otherwise qualified to register, but fails to demonstrate to the registrar that applicant is of good moral character and the registrar so finds, the registrar shall endorse upon the application the words "not of good moral character," and shall state the facts or reasons why he finds applicant not to be of good moral character.

§ 4. If applicant is not otherwise qualified under said Constitution and laws and fails to demonstrate that he is of good moral character, then the registrar shall endorse upon the ap-

plication the word "failed," and may endorse thereon the words "not of good moral character," but if he endorses the latter on the application he shall state the facts and reasons why he finds applicant not to be of good moral character.

* * * * *

Mississippi Laws 1962, Chapter 572 (formerly House Bill 822, now incorporated in Miss. Code, § 3212.7):

§ 1. Within ten (10) days after the receipt by the registrar of any application to register to vote and before consideration is given to the sufficiency of the application, the registrar shall deliver for publication in a newspaper hereinafter described the name and address of such applicant as stated in said application and shall cause same to be published once each week for two (2) consecutive weeks in a newspaper having general circulation in the county where such applicant has applied to register, but if no such newspaper is published in such county, then publication shall be made in some newspaper published in an adjoining or other county but of general circulation in the county of the residence of the applicant.

§ 2. The said name and address shall be published in said newspaper under a heading entitled: "Applicants for registration to vote." When said publication shall have been completed, proper proof of publication shall be furnished to the registrar and same shall be preserved as a record of his office. The cost of the publication and proof thereof shall be paid by the county out of its general fund at the rate for legal notices.

§ 3. If within fourteen (14) days, exclusive of the date of the last publication of the name or names aforesaid, after the date of the last publication, no qualified elector of the county,

other than the registrar, shall have challenged, in the manner prescribed by law, the good moral character of applicant and any other requirement which applicant must meet in order to be qualified to register to vote, the registrar shall within a reasonable time, under the circumstances, determine whether applicant has complied with the Constitution and laws of the State of Mississippi to entitle him to register to vote.

* * * * *

Mississippi Laws 1962, Chapter 573 (formerly House Bill 904, now incorporated in Miss. Code, §§ 3217-01-3217-15):

* * * * *

§ 1. The sufficiency and the truthfulness of the statements made in the application to register to vote, and the contents thereof, and the good moral character of an applicant to register to vote are material, and this act is adopted to further enforce the requirements to register to vote as set out in the Constitution and laws of the State of Mississippi.

§ 2. Any qualified elector of the county may challenge the good moral character of any applicant and any other requirement of any applicant to vote within fourteen (14) days after the date of the last publication of the name and address of such applicant by filing with the registrar an affidavit in duplicate setting forth facts upon which the challenge is based. Upon the filing of any such challenge the registrar shall within seven (7) days thereafter, exclusive of the date of the filing of such challenge, send to applicant by certified mail, addressed to him at the address shown on the application, one copy of such affidavit, and notice of the date, time and place where the registrar will hold an administrative hearing to determine the sufficiency of the application or challenge.

§ 3. The registrar, who is an administrative officer of the county in which he serves as registrar, is hereby vested with full power and authority to hold and conduct such administrative hearing and render his decision thereon; he may render his decision at the completion of the hearing or may take the matter under advisement just as a court may do.

§ 4. Such hearing shall be held in the office of the registrar or at some other place designated by the registrar in the county courthouse, and shall be set within a reasonable time after the date of the mailing of said notice. If there be two (2) judicial districts in the county, then the hearing shall be had in the courthouse of the judicial district in which the application to register is made. On his own motion or for good cause shown, the registrar may change the date and time of such hearing. At such hearing by the registrar he may hear oral and documentary evidence in support of, in challenge of, or denial of, the sufficiency of the application, the good moral character of the applicant, and as to any other requirement which applicant must meet in order to be qualified to register to vote.

§ 5. The registrar may issue subpoenas to be served by the Sheriff of the county to secure their attendance as witnesses and the production of documents at such hearing. Obedience to any such subpoena may be secured by the registrar by filing with the Circuit Judge, in term time or in vacation, a petition seeking enforcement, and the person subpoenaed shall obey the order of the Circuit Judge made therein.

The Circuit Judge, in vacation or in term time, is hereby vested with jurisdiction to hear and determine such petition, make proper orders thereon and issue appropriate process, and said petition shall be heard at such time

and place as he may specify on five (5) days' notice to all parties.

§ 6. The registrar shall administer to the witnesses who testify in said administrative hearing the same oath as is used in the trial of cases in the Circuit Court.

§ 7. The registrar shall require all testimony taken before him to be taken down by a competent stenographer or reporter, and a transcript thereof shall be filed with and retained by the registrar as a record of his office. All costs of such proceedings may be taxed by the registrar in accord with the manner and practice pertaining to costs in the Chancery Court under the laws of this state.

§ 8. If the decision of the registrar be that the applicant is qualified to register under the Constitution and laws of the State of Mississippi, he shall be forthwith registered; but if the registrar finds that applicant is not qualified under said Constitution and laws to be registered, he shall not register the applicant but shall mark his application "failed;" but if he finds that applicant is not of good moral character he shall so endorse the application and state the facts upon which the finding of lack of good moral character is based.

§ 9. At such hearing held by the registrar, applicant and any person or persons challenging the truthfulness or sufficiency of the application may be represented by counsel, but applicant and any challenger may appear pro se in and on his own behalf if they choose. Witnesses may be examined or cross-examined as in trials in the Circuit Court.

§ 10. An appeal may be taken to the Board of County Election Commissioners by any persons against whom the registrar may decide within the same time and in the same manner as is now provided for an appeal from registration or denial of registration by the registrar.

§ *11.* If the applicant or any challenger does not appear at the time and place set by the registrar for the hearing of any challenge, the registrar may, in his discretion, reset the hearing or may proceed and determine whether applicant is or is not, as the case may be, qualified under the Constitution and laws of the State of Mississippi to register to vote.

The person or persons against whom the registrar decides may appeal as above provided just as if a hearing had been held.

§ *12.* Strict rules of evidence shall not be enforced at the hearing herein provided for. Witnesses may be examined by the applicant or his attorneys, and by the challenger or challengers or their attorneys.

§ *13.* The provisions of this act are intended to provide an additional administrative method whereby third parties may challenge the sufficiency of any application to register and the good moral character of an applicant, and are not intended to affect the right, duty and authority of the registrar to determine such qualifications, as now provided by law, if no challenge is made by any third party.

* * * * *

APPENDIX B

MISSISSIPPI VOTER REGISTRATION APPLICATION FORM

SWORN WRITTEN APPLICATION FOR REGISTRATION

(By reason of the provisions of Sections 241, 241-A and 244 of the Constitution of Mississippi and relevant statutes of the State of Mississippi, the applicant for registration, if not physically disabled is required to fill in this form in his own handwriting in the presence of the registrar and without assistance or suggestion of any person or memorandum.)

1. Write the date of this application ----------
2. What is your full name? ----------
3. State your age and date of birth ----------
4. What is your occupation? ----------
5. Where is your business carried on? (Give city, town or village, and street address, if any, but if none, post office address.) If not engaged in business, so state. ----------
6. By whom are you employed? (Give name and street address, if any, but if none, post office address.) If not employed, so state. ----------
7. Where is your place of residence in the county and district where you propose to register? (Give city, town or village, and street address, if any, but if none, post office address.) ----------
8. Are you a citizen of the United States and an inhabitant of Mississippi? ----------
9. How long have you resided in Mississippi? ----
10. How long have you resided in the election district or precinct in which you propose to register? ----

11. State your last previous places of residence. (Give street address, if any, but if none, post office address.) _____

12. Are you a minister of the gospel in charge of an organized church, or the wife of such a minister? If so, what church? (Give address in each instance.) _____

13. Check which oath you desire to take: (1) General _____ (2) Minister's: _____ (3) Minister's wife: _____ (4) If under 21 years at present, but will be 21 years old by date of general election. _____

14. If there is more than one person of your same name in the precinct, by what name do you wish to be called? _____

15. Have you ever been convicted of any of the following crimes: bribery, theft, arson, obtaining money or goods under false pretenses, perjury, forgery, embezzlement, or bigamy? _____

16. Have you ever been convicted of any other crime (excepting misdemeanors for traffic violations)? _____

17. If your answer to question 15 or 16 is "Yes", name the crime or crimes of which you have been convicted, and the year, court, and place of such conviction or convictions: _____

_____

_____

18. Write and copy in the space below, Section _____ of the Constitution of Mississippi: (Instructions to Registrar: You will designate the Section of the Constitution and point out same to applicant).

_____

_____

19. Write in the space below a reasonable interpretation (the meaning) of the Section of the Constitution of Mississippi which you have just copied:

---

20. Write in the space below a statement setting forth your understanding of the duties and obligations of citizenship under a constitutional form of government.

---

21. Sign the oath or affirmation referred to in question 13, and which is:

NOTE: Registrar give applicant oath selected under question 13, Mark out that portion of oath that is not applicable.

NOTE: Registrar. In registering voters in Cities and Towns not all in one election district, the name of such city or town may be substituted in the Oath for the Election District.

(a) GENERAL and/or SPECIAL OATH:

I, _____, do solemnly swear (or affirm) that I am twenty-one years old (or I will be before the next election in this County) and that I will have resided in this State two years, and _____ Election District of _____ County one year next preceding the ensuing election, and am now in good faith a resident of the same, and that I am not disqualified from voting by reason of having been convicted of any crime named in the Constitution of this State as a disqualification to be an elector; that I will truly answer all questions propounded to me concern-

ing my antecedents so far as they relate to my right to vote, and also as to my residence before my citizenship in this District; that I will faithfully support the Constitution of the United States and of the State of Mississippi, and will bear true faith and allegiance to the same, So Help Me God.

Applicant's Signature to Oath

(b) OATH OF MINISTER and/or MINISTER'S WIFE:

I, _____, do solemnly swear (or affirm) that I am twenty-one years old (or I will be before the next election in this County) and that I am a Minister, or the wife of a Minister, of the Gospel in charge of an organized church, and that I will have resided two years in this State and in _____ Election District of _____ County six months next preceding the ensuing election, and am now in good faith a resident of the same, and that I am not disqualified from voting by reason of having been convicted of any crime named in the Constitution of this State as a disqualification to be an elector; that I will truly answer all questions propounded to me concerning my antecedents so far as they relate to my right to vote, and also as to my residence before my citizenship in this District; that I will faithfully support the Constitution of the United States and of the State of Mississippi, and will bear true faith and allegiance to the same. So Help Me God.

Applicant's Signature to Oath

Applicant's Signature to Application
(The Applicant will also sign his name here)

STATE OF MISSISSIPPI
County of _____

Sworn to and subscribed before me by the within named _____ on this the _____ day of _____, 19____.

_____
County Registrar

(SEAL)

Is applicant of good moral character? _____

If not, why? _____

Does applicant qualify? _____

Passed _____ Failed _____

_____
County Registrar

U.S. GOVERNMENT PRINTING OFFICE: 1964

MOTION FILED

OCT 17 1964

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 73

UNITED STATES OF AMERICA,

Appellant,

—v.—

STATE OF MISSISSIPPI; ROSS R. BARNETT, JOE T. PATTERSON, HEBER A. LADNER, as members of the MISSISSIPPI STATE BOARD OF ELECTION COMMISSIONERS; H. K. WHITTINGTON, Circuit Clerk and Registrar of Amite County; MRS. PAULINE EASLEY, Circuit Clerk and Registrar of Claiborne County; J. W. SMITH, Circuit Clerk and Registrar of Coahoma County; MRS. MARTHA TURNER LAMB, Circuit Clerk and Registrar of Le Flore County; T. E. WIGGINS, Circuit Clerk and Registrar of Lowndes County; WENDELL R. HOLMES, Circuit Clerk and Registrar of Pike County,

Appellees.

MOTION FOR LEAVE TO FILE AND BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 73

UNITED STATES OF AMERICA,

Appellant,

—v.—

STATE OF MISSISSIPPI; ROSS R. BARNETT, JOE T. PATTERSON, HEBER A. LADNER, as members of the MISSISSIPPI STATE BOARD OF ELECTION COMMISSIONERS; H. K. WHITTINGTON, Circuit Clerk and Registrar of Amite County; MRS. PAULINE EASLEY, Circuit Clerk and Registrar of Claiborne County; J. W. SMITH, Circuit Clerk and Registrar of Coahoma County; MRS. MARTHA TURNER LAMB, Circuit Clerk and Registrar of Le Flore County; T. E. WIGGINS, Circuit Clerk and Registrar of Lowndes County; WENDELL R. HOLMES, Circuit Clerk and Registrar of Pike County,

Appellees.

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

The American Civil Liberties Union as *amicus curiae* respectfully moves this court for leave to file the attached brief. The United States has consented; the State of Mississippi has denied consent. The consent and denial are on file with the Clerk.

This case is of crucial importance to the freedom of the nearly one-half million eligible Negro citizens of Mississippi to exercise their right to vote. Denial of the franchise is one of the principal methods of maintaining Negroes in a second-class status in Mississippi. See generally, 1961 United States Commission on Civil Rights Report, Vol. I, Voting. As a direct consequence of their inability to vote, Negroes are unable to secure justice from the law enforcement officials or courts of Mississippi, or to vindicate their civil rights and liberties. The case is of enormous importance to the attainment of these goals.

This brief supports the claims set forth in the complaint of the United States in the District Court. These are that certain constitutional and statutory provisions of the State of Mississippi dealing with voter qualification and election procedures are invalid. Specifically, the United States alleges that Sections 244 and 241A of the Mississippi Constitution, so much of Section 3209.6, Mississippi Code, as permits the destruction of voting records, and Chapters 570, 571, 572 and 573 of the Mississippi Laws of 1962 are in violation of the Fourteenth and Fifteenth Amendments to the United States Constitution and the Civil Rights Acts of 1957 and 1960.

In addition to supporting the claims of the United States, *Amicus* attacks the constitutionality of the Mississippi poll tax as applied to Mississippi State elections. The United States in its complaint does not assert that the Mississippi poll tax is invalid.

While *amicus curiae* ordinarily limits itself to discussing the law within the context of the case as framed by the pleadings, a court has discretionary power to accept aid

from *amici curiae* which goes beyond the ordinary function. See Krislov, *The Amicus Curiae Brief: From Friendship to Advocacy*, 72 Yale L. J. 694 (1963). In *Bush* v. *Orleans Parish School Board*, 191 F. Supp. 871 (E. D. La. 1961), *aff'd.* 367 U. S. 908 (1962), the court granted an injunction not on the motion of the plaintiffs, but of the United States as *amicus curiae*. Although the government in that case was "no ordinary amicus," 191 F. Supp. at 877, the principle involved applies here. The court in *Bush*, having taken jurisdiction of the case initiated by named litigants, exercised a form of "protective jurisdiction" and invited the government's participation to "aid the court in the effectuation of its judgment." *Id.* at 876. The present suit was initiated by the Attorney General as petitioner, and the requests for additional relief contained in the attached *amicus curiae* brief can be closely analogized to the government's request for injunctive relief in *Bush*.*

Viewed another way, the *amicus* is simply suggesting a course of action which the court might follow *sua sponte*. See *Bush* v. *Orleans Parish School Board*, *supra* at 878 n. 16. See *Mapp* v. *Ohio*, 367 U. S. 643 (1961) (argument that *Wolf* v. *Colorado* should be overruled contained only in brief of American Civil Liberties Union, *amicus curiae*). Moreover, in the present case the additional relief requested by *Amicus* falls within Prayer No. Eight of the complaint that the court "grant such additional relief as justice may require" (R. 23). Effective relief requires that

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* The *amicus curiae* brief submitted by the American Veterans Committee in *Sweatt* v. *Painter*, 339 U. S. 629 (1950), also requested the Court to issue a stronger mandate than the petitioner sought. Cf. *Faubus* v. *United States*, 254 F. 2d 797 (8th Cir. 1958); *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U. S. 238 (1944).

all unconstitutional obstacles between a citizen and the polling booth be enjoined.

Respectfully submitted,

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Appellees.

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

Interest of *Amicus*

The interest of *amicus* is set forth in the attached motion for leave to file this brief.

Opinions Below

The opinions of the three judge district court are reported at 229 F. Supp. 925 (S. D. Miss., 1964).

Constitutional Provisions Involved

Mississippi Constitution

Section 241:

> Every inhabitant of this state, except idiots, insane persons and Indians not taxed, . . . who has paid on or before the first day of February of the year in which he shall offer to vote, all poll taxes which may have been legally required of him, and which he has had an opportunity of paying according to law, for the two preceding years, and who shall produce to the officer holding the election satisfactory evidence that he has paid such taxes, is declared to be a qualified elector; . . .

Section 241-A:

> In addition to all other qualifications required of a person to be entitled to register for the purpose of becoming a qualified elector, such person shall be of good moral character.
>
> The Legislature shall have the power to enforce the provisions of this section by appropriate legislation.

Section 243:

> A uniform poll tax of two dollars, to be used in aid of common schools, and for no other purpose, is hereby imposed on every inhabitant of this state, male or female, between the ages of twenty-one and sixty years, except persons who are deaf and dumb, or blind, or who are maimed by loss of hand or foot; said tax to be a lien only on taxable property. The board of supervisors of any county may, for the purpose of aiding schools in that county, increase the poll tax in said

county but in no case shall the entire poll tax exceed in any one year three dollars on each poll. No criminal proceedings shall be allowed to enforce the collection of the poll tax.

Section 244:

Every elector shall . . . be able to read and write any section of the Constitution of this State and give a reasonable interpretation thereof to the county registrar. He shall demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government.

The person applying to register shall make a sworn, written application for registration on a form to be prescribed by the state board of election commissioners, exhibiting therein the essential facts and qualifications necessary to show that he is entitled to register and vote, said application to be entirely written, dated and signed by the applicant in the presence of the county registrar, without assistance or suggestion from any person or memorandum whatever; provided, however, that if the applicant is unable to write his application by reason of physical disability, the same, upon his oath of such disability, shall be written at his unassisted dictation by the county registrar.

Any new or additional qualifications herein imposed shall not be required of any person who was a duly registered and qualified elector of this state prior to January 1, 1954.

The Legislature shall have the power to enforce the provisions of this section by appropriate legislation.

Statement of the Case

This action was instituted by the United States on August 28, 1962, in the United States District Court for the Southern District of Mississippi under 42 U. S. C. 1971(d) and 28 U. S. C. 1345. The appellees are the State of Mississippi, the members of the State Board of Election Commissioners, and six county voter registrars. The complaint challenged the constitutionality of certain constitutional and statutory provisions of the State of Mississippi dealing with voter qualification and election procedures. Specifically, it claimed that Sections 244 and 241A of the Mississippi Constitution, so much of Section 3209.6 Mississippi Code, as permits the destruction of voting records, and Chapters 570, 571, 572 and 573 of the Mississippi Laws of 1962 are invalid as in violation of the Fourteenth and Fifteenth Amendments to the United States Constitution and the Civil Rights Acts of 1957 and 1960. By way of relief, the United States requested that the challenged provisions be declared unconstitutional; that the court find that the implementation of the invalid legislation has deprived Negro citizens of the right to vote on account of their race, and that the deprivations have been pursuant to a pattern or practice of racial discrimination within the meaning of 42 U. S. C. 1971(e); and the court grant appropriate injunctive relief.

Because the complaint challenged, on constitutional grounds, certain provisions of the State constitution and statutes, a district court of three judges was convened pursuant to 28 U. S. C. 2281. On November 17 and 19, 1962, appellees filed motions requesting that the complaint be dismissed on the grounds that the complaint failed to state a claim upon which relief could be granted. On March 5, 1964, before trial, the district court, Circuit Judge Brown

dissenting, decided that the complaint failed to state a claim upon which relief could be granted and entered an order dismissing the complaint. On April 10, 1964, the United States filed a notice of appeal to this Court, and jurisdiction was noted on June 22, 1964.

ARGUMENT

Introduction

The constitutional invalidity of the Mississippi voting laws discussed in this brief is shown by their history and past and present effects. These laws intentionally discriminate on the grounds of race and implement Mississippi's long-standing legislative policy of disenfranchising Negroes. See Appendix, "Restrictions on Negro Voting in Mississippi History."[1] The state constitutional and statutory provisions attacked here might in other circumstances be defended as valid measures to protect the quality of the electorate. Any such defense by appellees is obviously a sham because of the studied effort made by Mississippi since the Nineteenth Century to enact laws which are innocuous on their face but invidious in operation. The following brief historical survey, largely taken from the exhaustive historical study contained in the Appendix, overcomes any presumption that Mississippi's voting laws were passed and are being administered in good faith.

During Reconstruction in Mississippi, Negro males were enfranchised for the first time and soon constituted a majority of the Mississippi electorate. By 1870, many Negroes

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[1] The Appendix, which has been separately filed with the Clerk, was prepared by Mr. Kenneth Kemper, now a student at Columbia Law School. A letter from James W. Silver, Professor of History at The University of Mississippi, which confirms the accuracy of The Appendix, has also been filed with the Clerk.

had seats in the state legislature. White resentment led to attempts to again subjugate the Negro through the use of violence, intimidation, and economic sanctions—all designed to deprive him of the vote. By 1875 this goal had been achieved. The new white-controlled legislature then provided for the appointment of voting registrars with broad discretionary powers to be used in discouraging Negro voting.

Because some white Mississippians were displeased with the extra-legal tactics (often subject to corruption and use against whites) employed to keep the political structure white, a state constitutional convention was called to find permanent methods of maintaining white control. Although a majority of the registered voters were Negroes, an ugly campaign resulted in only one Negro delegate being elected to the convention.

From the outset there was complete candor that the purpose of the Convention of 1890 was to assure the ascendency of that "race whose rule has always meant prosperity and happiness to all races." Opening address of the President of the Convention, S. S. Calhoon. The Mississippi Supreme Court later acknowledged that the intent of the Convention was "to obstruct the exercise of the franchise by the Negro race." *Ratliff* v. *Beale*, 74 Miss. 247, 266, 20 So. 865, 868 (1896). The court added that "Restrained by the Federal Constitution from discriminating against the Negro race, the convention discriminated against its characteristics . . . " 20 So. at 868.

Several means were employed to effect this purpose. Timely payment of a poll tax was made a prerequisite to voting. The poll tax "was primarily intended by the framers . . . as a clog upon the franchise . . . ". *Id.* at 869; Appendix at 36-38. A voting applicant was henceforth required to read a section of the state constitution or to give

a reasonable interpretation of a section read to him. The literacy requirement was chosen to take advantage of the sharp disparity between the number of illiterate Negroes (76%) and illiterate whites (11%). Moreover, the interpretation alternative, with registrars having discretion to judge answers, in effect exempted white illiterates from the literacy requirement. Indeed, as the American Law Review wrote at the time, the discriminatory implementation of the plan by white registrars was expected as a matter of course. The Convention also adopted an apportionment system, retained to the present day, which insured that the counties whose populations are predominantly white control the legislature and election of the executive through an electoral college.

Upon the adoption of the Constitution, the President of the Convention congratulated its members and noted: "[The white] race alone can now safely exercise the function of ruling. . . . " Speech by President Calhoon. The confidence of the speaker was justified; prior to the Convention Negroes constituted a majority of the registered voters in Mississippi, but by 1892 only 8,615 Negroes were included among the 78,742 registered voters.

In 1902, whites, fearing that the Negro would overcome the literacy barrier by taking advantage of the public education system, adopted a white primary. When this device was declared unconstitutional in *Smith* v. *Allwright*, 321 U. S. 649 (1944), Mississippi responded by establishing as a qualification for primaries a vague and indefinite test (that voters be "in accord with the party's principles") and provided for its discretionary administration by white primary officers.

In 1954, partly due to specters raised by *Brown* v. *Board of Education*, 349 U. S. 294 (1954), the state constitution was amended to require a voting registrant (1) to read

and write any section of the state constitution, *and* (2) to give a reasonable interpretation thereof, *and* (3) to demonstrate an understanding of "the duties and obligations of citizenship," *and*, finally, (4) to present a registration form prepared and sworn to by him. Miss. Const. Section 244. These new tests were to be applied only to people registering after passage of the amendment. The brunt of this obnoxious "grandfather clause" fell, of course, on those not already registered, a group containing a vastly higher percentage of prospective Negro voters than prospective white voters. Moreover, the requirements imposed were more burdensome generally to unregistered Negroes than to unregistered whites—even apart from the hostile registrars —because Mississippi provided Negroes with inferior educational opportunities.

The discretion of registrars was recently augmented by a statute providing that voters be of "good moral character." Miss. Code, Section 3235. This provision has been reinforced by requiring the names and addresses of new applicants for voter registration to be published in local newspapers so that any person having knowledge of their lack of "good moral character" may contest the registration. Miss. Code, Sections 3212.7, 3217.01-3217.15. Publication itself is an additional burden. Much worse, however, it is an open invitation to those who employ fear and force to intimidate prospective Negro registrants.

I.

Mississippi's requirement that voting registrants read and write and interpret the State Constitution denies Negro citizens the equal protection of the laws, due process of law, and the right to vote guaranteed by the Fourteenth and Fifteenth Amendments.

Section 244 of the Mississippi Constitution provides:

> Every elector shall . . . be able to read and write any section of the Constitution of this State and give a reasonable interpretation thereof to the county registrar. He shall demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government.
>
> The person applying to register shall make a sworn, written application for registration on a form to be prescribed by the state board of election commissioners, exhibiting therein the essential facts and qualifications necessary to show that he is entitled to register and vote, said application to be entirely written, dated and signed by the applicant in the presence of the county registrar, without assistance or suggestion from any person or memorandum whatever; provided, however, that if the applicant is unable to write his application by reason of physical disability, the same, upon his oath of such disability, shall be written at his unassisted dictation by the county registrar.
>
> Any new or additional qualifications herein imposed shall not be required of any person who was a duly registered and qualified elector of this state prior to January 1, 1954.
>
> The Legislature shall have the power to enforce the provisions of this section by appropriate legislation.

The Legislature responded to the invitation contained in the final paragraph. Mississippi Code, Section 3235.

The Mississippi literacy test appears egalitarian on its face, but analysis reveals that its effect is inevitably discriminatory because of the social and legislative setting in Mississippi. Accordingly, the test violates the Equal Protection and Due Process clauses of the Fourteenth Amendment and the Fifteenth Amendment. Furthermore, the literacy test and interpretation provisions, in leaving uncontrolled discretion to state officials, violate the Fourteenth and Fifteenth Amendments by permitting and, indeed, inviting racial discrimination in the application of the tests. That such discrimination has actually taken place on a wide scale is a matter of public knowledge and is demonstrated by the evidence in the record (R. 388-1275, 1286-1408).

The leading case of *Williams* v. *Mississippi*, 170 U. S. 213 (1898), is not in any respect inconsistent with these contentions. *Williams* decided that a Negro convicted of murder by an all-white jury was not denied equal protection of the laws. The petitioner contended that (1) the literacy test, in conjunction with certain oath requirements, was susceptible of manipulation by registrars to prevent Negroes from registering, and (2) since the jury panel was drawn from voter registration lists, Negroes were disqualified from jury duty. In other words, the vice of the literacy test was claimed to lie in its administration. The Court, relying on a prior decision of the Supreme Court of Mississippi which found that jurors were selected without reference to voting lists, ruled that petitioner had not proven discrimination in the administration of the literacy test.

The present case is distinguishable from *Williams* for at least six reasons:

(1) *Williams* decided only a question of jury selection; it does not govern the constitutionality of a literacy test as applied to voter registration.

(2) The instant case, unlike *Williams*, involves allegations that the literacy test is invalid on its face.

(3) The Department of Justice introduced extensive evidence in the instant case proving beyond question that the literacy test is discriminatory as applied.

(4) The relevant constitutional language is different:

(a) The 1898 version of Section 244 considered in *Williams*, did not require that an applicant be able to write, and was drafted in the disjunctive:

> "[E]very elector shall . . . be able to read any section of the constitution of this state; *or* he shall be able to understand the same when read to him, *or* give a reasonable interpretation thereof." (Emphasis added.)

Thus the interpretation test was an alternative to the reading test, and it was a reasonable inference that interpretation would be satisfactory if it showed a level of intelligence and education comparable to that of any person who could read.

(b) The present Section 244 is drafted in the conjunctive and there is an added writing requirement. It provides no standards for determining what constitutes a sufficient interpretation. Moreover, the combination of reading, writing and interpretation tests plainly imposes a more rigid standard than that considered in *Williams*. This more rigid standard, aside from its legislative and social setting, imposes requirements that do not meet any valid state purpose.

(5) The present interpretation test, containing no standards, is void for vagueness and for its inherent non-uniformity of application due to the wide discretion vested in the administering officials.

(6) *Williams* rests on the discredited proposition that unless a statute says *in haec verba* that Negroes cannot vote it is not void on its face. Since 1898, when that case was decided, the Supreme Court has departed from that position. See e.g., *Nixon* v. *Herndon*, 273 U. S. 299 (1927); *United States* v. *Classic*, 313 U. S. 299 (1941); and *Smith* v. *Allwright*, 321 U. S. 649 (1944). In *Davis* v. *Schnell*, 81 F. Supp. 872, *aff'd per curiam* 336 U. S. 933 (1949), it was held that merely because discrimination is subtle does not mean it is valid, and that the Fifteenth Amendment nullifies sophisticated as well as simple-minded modes of discrimination. The *Davis* court went behind the innocent words to find both a guilty intent and an impermissible purpose.

> "We cannot ignore the impact of the Boswell Amendment upon Negro citizens because it avoids mention of race or color: 'To do this would be to shut our eyes to what all others than we can see and understand.'" 81 F. Supp. at 881.

The Mississippi literacy and interpretation tests are extremely sophisticated methods of discrimination which rest on the social history of the state as well as on the arbitrariness of individual registrars. *Williams* can no longer be considered authority for the proposition that the United States Constitution is not violated by allowing the Mississippi literacy test to continue to disenfranchise most of the eligible Negro voters of that state.

The present Section 244 was held constitutional by a three-judge federal district court in *Darby* v. *Daniel*, 168

F. Supp. 170 (1958). *Darby*, however, is not dispositive of the present case because (1) in *Darby* the plaintiffs conceded the constitutionality of the original Section 244 (168 F. Supp. at 181); (2) in the present case appellant challenges the validity of that section and presents substantial evidence and arguments not presented in *Darby* to support its contention; (3) *Darby* was decided by a lower court; (4) *Darby* was based, with respect to vagueness, on the fact that the words used in the present Section 244 ("read," "reasonable," "interpret," "understand") were also used in the original Section 244 conceded to be valid in *Darby*, 168 F. Supp. at 182, and (5) *Darby*, in regard to discrimination by the registrar, was based upon the plaintiffs' failure to prove such discrimination. Consequently no precedent impedes an analysis of the unconstitutionality of the Mississippi literacy test now before the Court.

A. The Mississippi Literacy and Constitutional Interpretation Tests Are Unconstitutional on Their Face Because of the Legislative and Social Setting in Which They Were Enacted and Operate.

The literacy and constitutional interpretation tests in Section 244 of the Mississippi Constitution do in fact, and were intended to, impede Negro voter registration, not only by inviting discrimination by the registrars who grade the essays on the meaning of the constitution, but also because Negroes, as a result of deliberate state policy, receive substantially poorer education than whites. As the Greenville, Mississippi, *Delta Democrat Times* said editorially on October 10, 1954:

> "The proposal [Section 244] was designed to slow down Negro registrations and a number of [legislative] committee members have said they felt any long-range success in keeping Whites and Negroes separated lies in keeping Whites in control of the ballot boxes.

These tests are intimately related to an educational system which is designed to deprive Negroes of an opportunity to become literate. The Joint Committee of the National Education Association and the American Teachers Association, in a study entitled *Progress of the Education of Negroes, 1870-1950,* pointed out: (1) 45.3% of the population of Mississippi is Negro; (2) on a national average 11% of Negroes are illiterate as contrasted with 2.7% of whites; (3) in the period studied, Mississippi provided only $32.55 per Negro pupil in daily school attendance while providing each such white pupil $122.93; (4) the length of the school term was 141 days for Negroes and 163 days for whites; and (5) Negroes were able to attend school on an average per pupil of only 120 days per term while the whites attended 152 days. The 1961 report of the Mississippi State Department of Education, Division of Finance and Administration, shows that Negro pupils receive on a state-wide basis less than one-fourth as much support from local school funds as do white pupils. Such local funds constitute over one-half of the public school support. State-level funds are also discriminatorily allocated in favor of whites. Almost all white schools are accredited; almost all Negro schools are not.

In sum, there is the vicious cycle of (1) relatively high educational requirements for voting (and for holding public office, Miss. Const., Section 250) and consequently almost no Negro voting, which allows the election of (2) an all-white legislature that purposely keeps Negroes uneducated, which therefore means that (3) Negroes cannot qualify to vote, and the cycle begins again.

Literacy tests are not inherently unconstitutional, but as Mr. Justice Douglas pointed out in *Lassiter* v. *Northampton Election Board,* 360 U. S. 45, 53 (1959), a "literacy test may be unconstitutional on its face" if the legislative

setting of that test revealed that it is a "device to make racial discrimination easy." The present case involves just such a "device." The 1954 amendment to Section 244 of the Mississippi constitution was conceived of as a means for perpetuating white supremacy. See Appendix, p. 59, *et seq.*

The legislative and social settings in Mississippi show that the literacy test is not designed to insure an intelligent and independent exercise of the right to vote such as was approved by the Supreme Court in the *Lassiter* case. That decision held that literacy tests are not *per se* unconstitutional, but specifically left open the validity of literacy tests shown to be discriminatory in intent or effect. That such a test is unconstitutional finds support in the cases invalidating the white primary. *Nixon* v. *Herndon,* 273 U. S. 299 (1927); *United States* v. *Classic,* 313 U. S. 299 (1941); *Smith* v. *Allwright,* 321 U. S. 649 (1944).

A state which provides such unequal educational facilities for the Negro and white races may not deny the underprivileged race the opportunity to learn to read and write and to interpret its constitution, and then use this deprivation to disenfranchise that race. In such a setting, both a literacy test and a constitutional interpretation test are unconstitutional on their face.

B. The Mississippi Literacy and Constitutional Interpretation Tests Are Unconstitutional Because They Embody a Specie of the Discriminatory Grandfather Clause.

The Mississippi literacy test, which is now mandatory rather than an alternative to the constitutional interpretation test, embodies a forbidden "grandfather clause": those persons already registered are exempted from the more stringent requirements by the device of permanent registration.

In speaking of the Oklahoma Constitution in *Guinn* v. *United States*, 238 U. S. 347, 364 (1915), the Supreme Court stated:

> It is true it contains no express words of an exclusion from the standard [for registration] which it establishes . . . on account of race . . . prohibited by the Fifteenth Amendment, but the standard itself inherently brings that result into existence . . .

There the standard was a literacy test, but lineal descendants of those entitled to vote prior to enactment of the Fifteenth Amendment were expressly exempted. Thus a vast number of white citizens escaped the literacy burden and retained their franchise in spite of it, while Negro citizens felt its full burden. In Mississippi prior to the 1954 amendment to Section 244 of the Mississippi Constitution there was no mandatory literacy test. The 1898 version of Section 244 was drafted in the disjunctive, requiring registrants to be able to read *or* to understand the constitution when read to them. Under the biased eye of registrars, whites were registered and Negroes were not, as planned. In 1954 the section was rewritten in the conjunctive, making literacy an affirmative requirement. Given the disparity between white and Negro education, the literacy test becomes *per se* discriminatory.

But even if educational opportunity were equal, and even if the test were fairly administered so that whites and Negroes failed in equal proportions, the result would still be discriminatory. Inasmuch as those whites presently registered will remain registered, the absolute number of white voters must remain far greater than that of Negro voters far into the future, despite the fact that the white population exceeds the Negro by only a small percentage. Thus the necessary effect of the new standard, as in *Guinn*, is to

discriminate on grounds of race, an effect prohibited by the Fifteenth Amendment and the equal protection clause of the Fourteenth Amendment. The literacy test, a subtle "grandfather clause," is therefore unconstitutional on its face.

C. The Mississippi Constitutional Interpretation Test Imposes a Vague, Non-Uniform Standard and Is Not Reasonably Related to a Proper State Purpose.

The requirement of Section 244 that a voter registrant interpret a section of the state constitution is void for vagueness. The state constitutional provision and its implementing statutes do not define "a reasonable interpretation." Is it to mean what the Mississippi Supreme Court has said, what the words of the constitution would seem on their face to mean, any reasonable interpretation showing intelligent comprehension of the meaning of written language, or something else? In fact, the individual registrar has unlimited discretion to determine whether an interpretation is sufficient. The test thus is void not only for vagueness, but also because it provides no uniform standard by which all voters are to be judged equally. Different registrars will have different views as to the meaning of the constitutional provisions, the provisions put to registrants, and the type of interpretation which will be satisfactory. Moreover, such vague and non-uniform standard facilitates racial discrimination.

The Court's recent ruling in *Baggett* v. *Bullitt*, 377 U. S. 360 (1964), reaffirmed the established rule that "a law forbidding or requiring conduct in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates due process of law." In *Baggett*, the Court invalidated loyalty oaths for state employees because their vagueness created "the hazard of

being prosecuted for knowing but guiltless behavior." Certainly the solicitude for individual conscience and rights, evidenced so forcefully by that opinion, encompasses protection of Mississippi's citizens against loss of their precious voting right through application of a standard even vaguer than those contained in the invalid loyalty oaths. *Baggett* and the authorities cited therein lend conclusive support to the contention that the interpretation test for voting violates due process of law.

Obviously, opinions can and do differ, even among trained lawyers and political scientists, as to the meaning of a state constitutional provision. Where a state's highest court has interpreted a provision, even a lawyer might well be unaware of it unless he had researched the particular point. Clearly it is unreasonable to assume that a citizen is unfit to vote unless he has studied all state court opinions construing provisions of the state constitution.

This conclusion is reinforced by the fact that no valid state purpose is served, reasonably or otherwise, by the requirement that a voter registrant be able to interpret the state constitution. It is not the duty of voters to be able to determine the validity of legislation; their intelligence is not revealed by answers to questions involving technical points of law. Indeed, most members of the state bar, and most elected officials of the state, would probably be unable to explain exactly which interpretation of the state constitution is "best" without research.

The improper purpose of an interpretation test is to disenfranchise Negroes. The evidence contained in the Appendix and in the record demonstrates that such discrimination occurs often in the application of the test. See *e.g.*, Appendix, at 61-67.

II.

The Mississippi voter registration provision requiring an applicant to possess "good moral character" is unconstitutionally vague on its face and has been applied in violation of the Fourteenth and Fifteenth Amendments.

Section 241-A of the Mississippi Constitution provides:

> In addition to all other qualifications required of a person to be entitled to register for the purpose of becoming a qualified elector, such person shall be of good moral character.
>
> The Legislature shall have the power to enforce the provisions of this section by appropriate legislation.

Section 3235 of the Mississippi Code provides, in pertinent part:

> . . . any person registering after the effective date of this act shall be of good moral character as required by § 241-A of the Mississippi Constitution.

A. The "Good Moral Character" Requirement Is Unconstitutionally Vague on Its Face.

Although limitations on the right to vote have been sustained, *Lassiter* v. *Northampton County Board of Elections*, 360 U. S. 45 (1958), the power given to a state by U. S. Const., Article 1, Sec. 2, to prescribe such limitations is circumscribed by the Fourteenth and Fifteenth Amendments and by Article I, Sec. 4 as well. *United States* v. *Classic*, 313 U. S. 299 (1941); *Smith* v. *Allwright* 321 U. S. 649 (1944).

The Mississippi legislature has made the judgment that only citizens of "good moral character" are suited to vote. The present case does not require the court to decide the reasonableness of that legislative determination because the "good moral character" requirement must fall since it contains no standards to guide the registrars who are to apply it, and is therefore unconstitutionally vague.

The legislature may not delegate authority to the registrars without enunciating some guidelines for the exercise of that authority. The United States Supreme Court has recognized this principle and has consistently applied it to legislative delegations of authority. *E.g.*, in *Panama Refining Co.* v. *Ryan*, 293 U. S. 388 (1935), the Court invalidated an act of Congress because it contained no ascertainable standard. True, the Supreme Court has upheld delegation of authority in which no standards were ascertainable [*e.g.*, *McKinley* v. *United States*, 249 U. S. 397 (1919); *Intermountain Rate Cases*, 234 U. S. 476 (1914); *Fahey* v. *Mallonee*, 332 U. S. 245 (1947)], but these cases involved delegation to administrators in areas where long-standing customs had been established or the terms of the statute involved words susceptible of reasonably uniform interpretation. For example, the statute in *McKinley* authorized the Secretary of War to suppress "houses of ill fame" within reasonable distances of military camps. The term "houses of ill fame" obviously referred to houses of prostitution, and any interpretation of the words would raise only the factual issue of whether prostitution was being practiced in the given case. In this case, however, there is considerable controversy over what constitutes "good moral character."

In *Repouille* v. *United States*, 165 F. 2d 152 (2d Cir. 1947), naturalization was sought by an immigrant who had been convicted of manslaughter for killing his crippled

son, who was, in the words of Judge Learned Hand, "a physical monstrosity." Judge Hand, although not prepared to hold that the applicant was of good moral character, was clearly unwilling to hold that he was not:

> "Many people—probably most people—do not make it a final ethical test of conduct that it shall not violate [the] law; few of us exact of ourselves or of others the unflinching obedience of a Socrates. There being no lawful means of accomplishing an end, which we believe righteous in itself, there have always been conscientious persons who feel no scruple in acting in defiance of a law which is repugnant to their personal convictions, and who even regard as martyrs those who suffered by doing so . . . " 165 F. 2d at 153.

Quite obviously there are few clear requisites of "good moral character" in the legal sense. The legal standard of "good moral character" should be less restrictive than the standard which might be favored, for example, by a religious body. In *Posuta* v. *United States*, 285 F. 2d 533 (2d Cir. 1961), it was held, per L. Hand, *J.*, that a woman did not lack good moral character despite her admission of sexual relations with a man not her husband. The court expressed grave difficulty in defining "good moral character", finding reason to doubt whether the petitioner's conduct would be condemned by the ordinary man or woman. Thus, Judge Hand applied the rule he had enunciated earlier in *Repouille*: The standard should be

> "Not these standards which we might ourselves approve, but whether 'the moral feelings, now prevalent generally in this country' would 'be outraged' by the conduct in question: that is, whether it conformed to 'the generally accepted moral convention current at the time.' " 165 F. 2d at 153.

If the Mississippi legislature had performed its duty of indicating what in its judgment constituted "good moral character," Negro registrants would have been apprised of the requirements they were obliged to meet. If they had failed to meet the explicit standards, they could have sought court review of the constitutionality of the standards as applied to them.

The difficulty of achieving a universally acceptable definition, rather than being an excuse for the abdication of legislative responsibility, indicates that the term chosen by the legislature was improper. A more precise term should have been used, if possible; if not, a series of standards should have been stated by the legislature. In the complete absence of guidelines, registrars are free to impose their individual moral views upon applicants. Indeed, in Mississippi, registrars may view Negro applicants as lacking in character by the very fact of their desire to vote, despite the constitutional mandates of the Fourteenth and Fifteenth Amendments.

B. The "Good Moral Character" Provision Has Been Unconstitutionally Applied as a Means of Evading the Guarantees of the Equal Protection of the Laws and the Right to Vote.

The good moral character requirement, contained in an amendment to the Mississippi Constitution, approved by the voters in 1960, was viewed as a means of maintaining segregation and perpetuating Negro disenfranchisement. The *Jackson Clarion-Ledger* said of the amendment and a companion proposal: "apparently both are aimed at maintaining segregation." See Appendix, p. 67, n.270.

The *Delta Democrat-Times* reported that:

> "A proposed Mississippi voter registration requirement that a person be of 'good moral character' has

been labeled as 'clearly unconstitutional' by the Civil Rights Commission (Rev. Cox).

The Circuit Clerk, who registers voters, would be the judge of character. Rev. M. Cox of Gulfport, Chairman of the State Advisory Committee to the Commission, said at the Group's monthly meeting Wednesday that he had received a letter from the Civil Rights Commission, saying that the Legislature's adoption of a morality voter requirement 'has really raised some eyebrows among the Civil Rights Staff.'

Retired Admiral R. Briscoe of Liberty, a Committee member, said the proposal doesn't define what the limits of morality are.' He said the requirement would give registrars 'an alibi' in excluding Negro voters." Appendix, p. 65.

The Citizens' Council newspaper urged voters "to safeguard Mississippi from the black bloc vote" by approving the proposed amendment which would require registrants to be of good moral character. The editorial said the proposed amendment would help "protect Mississippi ballot boxes from the self-seeking forays of bloc voting pressure groups" and discourage mass registration efforts on the part of irresponsible and immoral elements. Appendix, p. 67. John Emerich of the *McComb Enterprise-Journal* attacked the amendment because it was, in his opinion, "an ill disguised attempt to keep qualified Mississippi Negroes from voting.". Appendix, p. 67. The *Clarion Ledger* supported the amendment because it was designed to safeguard segregation. See Appendix, p. 67.

Two implementing bills added a new dimension to the "good moral character" requirement by effectively facilitating the intimidation of would-be Negro voters. Miss. Code, Sections 3212.7, 3217.01-3217.15. The statutes pro-

vide that within ten days after receiving an application for registration, the registrar shall publish the applicant's name and address in a local newspaper once a week for two weeks. Within two weeks after the last publication, any other registered voter in the county may file an affidavit challenging the good moral character of the applicant. When such a challenge is filed, the registrar sets a date for a hearing, holds the hearing, considers the evidence, and makes a finding as to the applicant's character. In effect, the burden of proving good moral character is on the applicant. Most Negroes, knowing that their names will be published, are deterred from registering. If they attempt to register, these laws increase the possibility of economic, psychological or physical coercion. The history of the "good moral character" provision and of the legislation implementing it shows that the purpose of the new laws is perpetuation of racial discrimination in regard to voting. The court should invalidate Mississippi's "good moral character" provision, and the legislation implementing it on the grounds that they contravene the Fourteenth and Fifteenth Amendments of the United States Constitution.

III.

The Mississippi poll tax violates the Fourteenth Amendment's equal protection and due process clauses and the Fifteenth Amendment since the tax, in intent and application, discriminates against Negroes and imposes a privilege tax upon voting.

Section 241 of the Mississippi Constitution provides in pertinent part:

> Every inhabitant of this state, except idiots, insane persons and Indians not taxed, . . . who has paid on or before the first day of February of the year in which he shall offer to vote, all poll taxes which may have been legally required of him, and which he has had an opportunity of paying according to law, for the two preceding years, and who shall produce to the officer holding the election satisfactory evidence that he has paid such taxes, is declared to be a qualified elector; . . .

Section 243 of the Mississippi Constitution provides:

> A uniform poll tax of two dollars, to be used in aid of common schools, and for no other purpose, is hereby imposed on every inhabitant of this state, male or female, between the ages of twenty-one and sixty years, except persons who are deaf and dumb, or blind, or who are maimed by loss of hand or foot; said tax to be a lien only on taxable property. The board of supervisors of any county may, for the purpose of aiding schools in that county, increase the poll tax in said county but in no case shall the entire poll tax exceed in any one year three dollars on each poll. No criminal proceedings shall be allowed to enforce the collection of the poll tax.

The passage of the Twenty-Fourth Amendment to the United States Constitution makes it unnecessary to consider the constitutionality of Mississippi's poll tax as applied to federal elections. However, the recent admendment does not deal with the constitutionality of a poll tax for voting in state elections. Certainly, failure to outlaw such a requirement is not to legalize it. Therefore, the constitutionality of Mississippi's poll tax, as applied to state elections, is still undecided.

A. The Mississippi Constitutional Convention of 1890 Intended the Poll Tax as a Means to Limit Negro Suffrage, Not as a Revenue Measure.

The Constitution of 1890 was promulgated as a result of the conditions then existing in Mississippi. See Appendix, p. 23 *et seq.* The 1890 Convention was called to perpetuate white dominance over the Negro and eliminate the need for lawless action by those in positions of responsibility. These aims were clearly indicated by statements made at the Convention and in contemporary newspapers. The poll tax it adopted has stood for nearly seventy-five years. J. P. Coleman, *The Origin of the Constitution of 1890*, reprinted from the JOURNAL OF MISSISSIPPI HISTORY, April 1957; *Ratliff* v. *Beale*, 74 Miss. 247, 20 So. 865 (1896).

The Supreme Court of Mississippi, in *Ratliff*, construed Section 243 of the Constitution of 1890. At issue was a lien on property to compel payment of the poll tax. The court found it necessary to examine carefully the history of Section 243. This section, on its face, appears compulsory, but does not allow criminal proceedings for its enforcement. Moreover, liens are permitted only on taxable property, rendering Negroes, in 1890 and at present, less subject than whites to collection of the tax because Negroes generally do not have such property. In 1959, only 13.7% of white

farmers were tenants or sharecroppers, while 58.7% of the Negro farm operators did not own the land they worked. *United States Census of Agriculture:* 1959, Vol. 1, part 33, p. 6.

The Mississippi Supreme Court said:

> "In our opinion, the clause [§243] was primarily intended by the framers of the constitution as a clog upon the franchise and, secondarily and incidentally only, as a means of revenue." 74 Miss. at 268, 20 So. at 869.

The court made it plain that the poll tax provision was not an isolated instance of discrimination through voting qualifications:

> "Within the field of permissible action under the limitations imposed by the federal constitution, the convention swept the circle of expedients to obstruct the exercise of the franchise by the Negro race. By reason of its previous condition of servitude and dependence, this race had acquired or accentuated certain peculiarities of habit, of temperament and of character, which clearly distinguishes it, as a race, from that of the whites—a patient, docile people, but careless, landless and migratory within narrow limits, without forethought and its criminal members given rather to furtive offenses than to the robust crimes of the whites. Restrained by the federal constitution from discriminating against the Negro race, the convention discriminated against its characteristics and the offenses to which its weaker members were prone." 74 Miss. at 266, 20 So. at 868.

The court's conclusions were supported on this further ground:

> "It is to be noted that the section is a part of the article on franchise, and not of that on common schools, in aid of which the tax was levied, and where it would more appropriately be placed as a revenue measure. This is not of great importance, but is of some weight." 74 Miss. at 267, 20 So. at 868.

The Supreme Court of Mississippi narrowed the possible scope of the lien, by finding the tax voluntary and not subject to rigorous enforcement.

B. The Mississippi Legislative Intention With Regard to the Poll Tax Has Not Changed Since 1890.

If the poll tax is a revenue measure, it seems strange that the amount of the tax has not been raised by the legislature, although the period since 1890 has been inflationary. Also, the counties of Mississippi have generally failed to exercise their power to raise the tax from two dollars to the original statutory maximum of three dollars. It is therefore unlikely that the tax is intended as a means of raising revenue for the schools, whose needs have obviously increased since 1890. In the last presidential election year the total raised by the poll tax was probably less than one million dollars. The total tax revenue of Mississippi's state and local governments in 1961 was approximately 300 million dollars, plus revenues from state stores, other sources of income, and aid from the Federal Government, sources which are not inconsiderable. *Governmental Finances in 1961,* Department of Commerce, G-CF61-No. 2, October 26, 1962, p. 29; *County and City Data Book 1962,* Department of Commerce, 1962, p. 6. The revenue of less than one million dollars from the poll tax is insignificant when compared with the total revenue of the state, county, and local governments. It cannot be maintained that a tax which has remained static for so long and has become so

insignificant in the total economic picture is primarily a revenue measure.

Moreover, payment of the poll tax is voluntary rather than compulsory unless the taxed individual seeks to vote, as was clearly shown by the complainants in *United States* v. *Dogan*, 206 F. Supp. 446 (N. D. Miss. 1962). They were unable to prove that election officials refused their proffered payment, but did demonstrate that no positive effort was made to collect the tax. The judge's opinion indicates that the sheriff did not regard it as his duty to actively collect the tax. In fact, he does not seem to have been very anxious to collect it even though the complainants were statutorily required to pay the tax and indicated their desire to do so to a deputy sheriff. *Id.* at 449.

The Supreme Court of Mississippi has not changed its interpretation of the legislative intention behind the poll tax. In *Wylie* v. *Cade*, 174 Miss. 426, 432-33, 164 So. 579 (1935), that court adopted and approved its statement in *Ratliff* about that purpose. The conclusion is thus inescapable that the Mississippi poll tax is a privilege tax on voting and is intended to prevent Negroes from voting.

C. The Economic Situation in Mississippi Inevitably Results in Discrimination Against Negroes Through the Voluntary Poll Tax.

The poll tax puts an onerous burden on persons earning small amounts of money, if they wish to vote. A man earning less than $1,000 a year cannot be expected to pay two dollars in February to preserve a right which cannot be exercised until November, especially if he is uncertain about being allowed to vote even if he pays the tax. To vote in a primary he must pay almost two years in advance. Mississippi Code, Section 3160 (1942).

The economic burden imposed by the Mississippi tax affects Negroes more than it does whites. The 1960 census

showed the disparity between the earnings of Negroes and whites in the state. Of Mississippians fourteen years of age or older, about seventy per cent of each race have some income. Of these, 33% of the whites and 69% of the Negroes earn less than $1,000 per year, and 50% of the whites and 87% of the Negroes earn less than $2,000 per year. The disparity is even greater when the earnings per family are compared:

Family Income	Percentage of Families	
	White	Negro
Under $1,000	10.1%	37.1%
$1,000–1,999	11.9%	29.1%
$2,000–2,999	12.4%	16.7%
$3,000–3,999	13.0%	8.0%
$4,000–4,999	12.2%	4.2%
$5,000–5,999	11.1%	2.0%
Above $6,000	29.3%	2.9%

The economic burden of the poll tax and the disparity between the economic situation of Negroes and whites is particularly striking in regard to Negro farmers. These include many of the Negroes who do have steady work, *United States Census of Population, 1960, Mississippi,* PC(1)-26C, pp. 113, 135, and their small incomes show they are unable to part easily with two dollars to obtain a privilege which may be denied anyway. There are 83,171 white farmers and 54,972 Negro farmers in Mississippi. The average value of the land and buildings of each white farmer is $18,341. The corresponding average figure for Negro farmers is $4,382. The average value per farm of products sold is $5,602 for white farmers and $1,792 for Negro farmers. Therefore, many more Negroes than whites are inevitably disenfranchised by the poll tax, because many more Negroes than whites in Mississippi live at or close to the subsistence level.

The stock southern answer fatuously says that the Negroes' economic situation and their consequent inability to pay the poll tax are their own fault, that they should be more responsible and energetic in order to increase their earnings. But economic opportunity is inextricably intertwined with the ability to vote and with access to educational opportunities. Other parts of this brief demonstrate that Negroes in Mississippi are denied equal access to educational opportunities, and the poll tax coupled with other measures severely restricts Negroes' right to vote. The discriminatory practices which prevent the Mississippi Negro from earning a living wage can be erased only when the Negro can vote and thereby help to determine who will make the crucial economic decisions.

The discriminatory intent behind the Mississippi poll tax and its uneven application are further demonstrated by the *United States Census of Agriculture: 1959*, Vol. 1, part 33, pp. 6, 102, 106, 112 and 116, abundant evidence of discrimination in collecting (or, rather, in refusing to collect) the tax.

The evidence compels the conclusion that the poll tax provisions of Sections 241 and 243 of the Mississippi Constitution were intended to be discriminatory, are intended to be discriminatory, and are discriminatory in effect today. Therefore, these sections violate the Fifteenth Amendment and the Fourteenth Amendment's guarantee of equal protection of the laws.

D. Prior Supreme Court Decisions Support the Conclusion That Sections 241 and 243 of the Mississippi Constitution Violate the Fourteenth and Fifteenth Amendments.

Breedlove v. *Suttle*, 302 U. S. 277 (1937), is the leading Supreme Court decision dealing with poll taxes. Payment of the tax discussed in that case was a prerequisite for voting (except for the blind or those over sixty years of age),

but the tax was compulsory for all other males whether or not they voted. The Court in *Breedlove* dealt primarily with the contentions that the tax violated the Nineteenth Amendment and the equal protection clause of the Fourteenth Amendment.

The Court held that the tax was not a deprivation of women's rights. It found that the Georgia tax was primarily a revenue measure which was universally enforced within permissible classifications:

> "Payment as a prerequisite is not required for the purpose of denying or abridging the privilege of voting. It does not limit the tax to electors. Aliens are not there permitted to vote, but the tax is laid upon them if within the defined class." 302 U. S. at 282.

Therefore, the Georgia tax was not a privilege tax on voting, but was a capitation tax on certain classes of people. For this reason, the holding in *Breedlove* is not dispositive of the present case. Here we do not have a compulsory capitation tax imposed on a reasonably selected class of people, but rather a tax which has to be paid only in order to vote, and which is discriminatory in both intent and application. As previously noted, the Mississippi poll tax provision appears in the franchise, not the revenue, article of the Mississippi Constitution.

There is dictum in *Breedlove* which might appear to have a bearing on the present case:

> "The payment of poll taxes as prerequisite to voting is a familiar and reasonable regulation long enforced in many states and for more than a century in Georgia. That measure reasonably may be deemed essential to that form of levy. Power to levy and power to collect are equally necessary. And, by the exaction of payment before registration, the right to vote is neither

denied nor abridged on account of sex." 302 U. S. at 283-84.

But this language is not decisive here. The Mississippi tax is a privilege tax on voting, not a revenue tax. The Mississippi tax is discriminatory in its intent and application, as the Georgia tax was held not to be. The Court's statement, quoted above, is the only discussion in its opinion of an issue not before the Court, since the appellant was a white male. The Georgia poll tax was imposed on males and females, but females were exempted if they did not register to vote. This exemption was justified for various gentlemanly reasons, according to the Court. 302 U. S. at 282-83. The Georgia tax, being imposed on all males, whether they voted or not, was not a privilege tax on the male appellant's voting. It may well have been a privilege tax on females' voting, but no female was challenging the tax.

The Supreme Court has long maintained an aggressive and diligent policy of enforcing the spirit of the Fifteenth Amendment:

> "The [Fifteenth] Amendment nullifies sophisticated as well as simple-minded modes of discrimination. It hits onerous procedural requirements which effectively handicap exercise of the franchise by the colored race although the abstract right to vote may remain unrestricted as to race." *Lane* v. *Wilson*, 307 U. S. 268, 275 (1939).

This policy invalidates Mississippi's poll tax, even if overt discrimination by voting registrars in administering the tax is not sufficient to invalidate the tax itself.

The Supreme Court demonstrated its determination to safeguard voting rights in *Gomillion* v. *Lightfoot*, 364 U. S.

339 (1960). Alabama had redrawn the municipal boundaries of Tuskegee so that almost all Negroes were excluded from the city and the Court held this gerrymander violative of the Fifteenth Amendment.

The power of the states to establish qualifications for voters under Article 1, Sec. 4 of the United States Constitution is similar to that of the states to establish political boundaries within states. In exercising either power the state may not deprive any race of the right to vote protected by the Fifteenth Amendment. The Mississippi poll tax in intent and in application deprives Negroes of the right to vote. Therefore the Mississippi poll tax violates the Fifteenth Amendment. Obviously it also violates the equal protection of the laws clause of the Fourteenth Amendment, since this discrimination on account of race clearly does not give Negroes the same rights under Mississippi law as are enjoyed by whites.

IV.

The cumulative discriminatory impact of the laws challenged herein renders them unconstitutional, even if individually they are valid.

The literacy, constitutional interpretation, and good moral character tests and the poll tax, were intended to, and do have an overwhelming combined impact that discriminates against Negroes. Each test presents another hurdle for the prospective voter, and offers another opportunity for discretion that invites discrimination. Even if the results of these requirements are not evident when each statute is considered alone, the pattern definitely emerges when the whole scheme is viewed against the background of Mississippi practice in the past and at present. The segregationists' plan is simple: create barriers, delay and harass, and thus maintain white supremacy. However, the tests for voting allow discrimination in education and employment to affect the political process which offers the Negro his best chance to elect state officials who will help end the pattern of discrimination. An examination of these laws in context can lead to but one conclusion—they were intended to discriminate, have been and will be applied to discriminate, and are accordingly inconsistent with the Constitution of the United States.

CONCLUSION

The Court below should be reversed and the Mississippi constitutional and statutory provisions involved here should be held unconstitutional.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 73

UNITED STATES OF AMERICA,

Appellant,

—v.—

STATE OF MISSISSIPPI; ROSS R. BARNETT, JOE T. PATTERSON, HEBER A. LADNER, as members of the MISSISSIPPI STATE BOARD OF ELECTION COMMISSIONERS; H. K. WHITTINGTON, Circuit Clerk and Registrar of Amite County; MRS. PAULINE EASLEY, Circuit Clerk and Registrar of Claiborne County; J. W. SMITH, Circuit Clerk and Registrar of Coahoma County; MRS. MARTHA TURNER LAMB, Circuit Clerk and Registrar of Le Flore County; T. E. WIGGINS, Circuit Clerk and Registrar of Lowndes County; WENDELL R. HOLMES, Circuit Clerk and Registrar of Pike County,

Appellees.

RESTRICTIONS ON NEGRO VOTING IN MISSISSIPPI HISTORY

APPENDIX TO THE BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

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Restrictions on Negro Voting in Mississippi History

by

Kenneth D. Kemper*

I.

Negroes were first imported to Mississippi in 1719. They were brought as slaves, as property, not as people. Ever since that date, the Negro has struggled to gain the right and privilege to vote. In the course of over two centuries, and under many different flags, his efforts have been thwarted. Actually, the Negro in Mississippi never had the right to vote in an election of any consequence until 1869, seventy-one years after the State first came under the jurisdiction of the United States.

The Negro was not permitted to vote while Mississippi was under French Dominion from 1699-1763. The British excluded the free Negro, the slave, and the Indian from franchise during their tenure of control of the territory, which lasted, from 1763 to 1779. The Spanish Dominion over Mississippi began again, in 1779. From that date until Spain lost control of the area to the United States, in 1798, the Negro, even if a free man, could not exercise the right of the ballot. The remainder of this analysis will deal with the Negroes' right to vote while Mississippi was a part of the Dominion of the United States, as the Mississippi Territory from 1798-1817, and as a member of the Union of the United States of America from 1817 and thereafter.

An analysis of the Negroes' right to vote in the United States, must begin with the laws of 1787. These laws, which evidently must have been the basis of suffrage in a number of states as well as Mississippi, show that to entitle a person to vote under our first suffrage law he must have been 1. Free, 2. Male, 3. of full age (presumably

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21 years), 4. A citizen of the United States and a resident of the territory, or a resident for two years in the territory, and 5. A Freeholder of fifty acres of land in the district.[1] In the summer of 1799 there was an election in the Mississippi Territory to choose a committee to fight for governmental reform. A request was made at the same time, to Congress, to grant the Mississippi Territory the second stage of being a territory, which would bring more popular rule. Congress, in 1800, approved the Territory's authority to have an assembly consisting of a House of Representatives of 9 members elected by the people and a legislative council of 5 members chosen by Congress from a list of names submitted to it by the Territorial House. In these elections, and in the election of 1799, Governor Sargent did not permit Free Negroes to vote.

The first voting legislation passed in Mississippi was for the municipal election to be held in Natchez in 1803. The "freeholders, landholders, and householders" of the City of Natchez were authorized by a majority vote to elect municipal officers.[2] The most notable thing about this, the first legislative act of Mississippi conferring the right of suffrage, is that no distinction was made because of age, color, or sex.

After the removal of Sargent as Territorial Governor, there was a campaign among the democratic elements in the Territory to abolish the traditional property qualification for voting. A petition was sent to Congress in 1807. In 1808, George Poindexter, who the year before had been elected the Congressional Delegate from the Territory, served as Chairman of a Committee to study the question. The end result was that the property qualification was not dropped. By an Act of Congress, approved January 9,

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[1] R. H. Thompson, "Suffrage in Mississippi." *Publications of the Mississippi Historical Society*, 1 (1898) p. 26.

[2] *Id.*, p. 27.

1808, the organic law so far as it related to the Mississippi Territory, was amended so as to provide that every free white male person in the Mississippi Territory, above the age of twenty-one years, having been a citizen of the United States, and resident in the said Territory one year next preceding an election of Representatives, and who has a legal or equitable title to a tract of land from the United States of the quantity of fifty acres or who may hold in his own right a town lot of value of one hundred dollars within said Territory, shall be entitled to vote for Representatives to the General Assembly of said Territory.[3] In addition, all voters had to have their taxes paid not less than six months prior to the election. Though the qualifications necessary to exercise the suffrage were actually stiffened in comparison to the laws of July 13, 1787, the amount of power placed in the hands of voters was increased. The election of the Territorial Delegate to Congress was for the first time placed in the hands of the voters. Too, the people could now elect twelve Members to the Territorial House of Representatives. However, it was this Act of Congress, passed in 1808, which first introduced the color line in Mississippi voting laws. Only free white male persons of age could vote. The few free Negroes who had struggled so hard to win their freedom, were denied the right to use the ballot box to show their preference.

In some Mississippi Towns, however, the freeholders and householders were still empowered to vote without reference to sex and all without reference and regard to age or color. In January, 1814, the Legislature restricted the suffrage in municipalities to landholders, freeholders, and householders. Of course, it is not known whether any free Negroes ever voted, or even attempted to vote in these

[3] *Id.*, p. 28.

elections. On their face, however, laws governing municipal elections made no restrictions because of the color of an individual's skin.

The organic law of the Mississippi Territory was again amended in 1814. On April 25, of that year, by an Act of Congress, the law regarding suffrage was changed to read: "Each and every free white male person, being a citizen of the United States, who shall have attained the age of 21 years, and who shall have resided one year in said Territory previous to any general election, and be at the time of any such election a resident thereof, shall be entitled to vote . . . ".[4] Again, it was Congress which laid down the color bar on voting. However, public opinion of the time, as expressed in the newspapers, supported the color restrictions made by Congress. "A Citizen," commenting on the Constitution in the *Washington Republican and Natchez Intelligencer* states that "all free white males liable to taxation or to militia duty, should be entitled to vote for representatives."[5] Color restrictions remained in elections for Representatives to the Territorial Assembly and to Congress. This was not the case in municipal elections.

The Territory had many different municipal election laws governing different towns. One law governing municipal elections passed in 1816 stated that:

> "No person shall vote at any election . . . for said town, unless he be 21 years of age, and shall have been a freeholder in said town, or tenant of a house or separate roof at least 6 months previous to any election and shall have paid a county, territorial or corporation tax, nor unless he be a citizen of the United States, or shall have resided within that part of West Florida

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[4] *Id.*, p. 29.

[5] *The Washington Republican and Natchez Intelligencer*, July 6, 1814, p. 1.

now in the possession of the United States, at the time of the change of government in that Province."[6]

This particular law had no restrictions on color or race attached to the prerequisites needed to qualify for the suffrage. There is still question whether or not in fact, Negroes were allowed to vote. Other municipal and county election laws set such qualifications for the franchise. The community of Huntsville required that one be free, white, and twenty-one years of age in order to be eligible to vote. Adams County in 1816 had qualifications restricting the vote to "(that) every white fre male person, being a citizen of the county of Adams, who shall have arrived at the age of twenty-one years, and resided in the said county twelve months previous to the said election, shall be admitted to vote thereof, and none other."[7] It is easy to see then, that there was no set rule in municipal elections as to whether or not Negroes would be allowed to vote. This privilege and the restrictions placed upon it, all depended on the particular locality.

The Territorial Assembly authorized a census of the Territory in 1816. The results of the census were as follows: The Territory contains 75,512 souls; of whom 45,085 were free white persons: 366 free people of color; and 30,061 slaves.[8] The census was taken because the people of the Territory were ready to hold a convention, form a Constitution, and seek admission to the union as a state, equal in standing to the other members. The Assembly passed a bill "To enable the people of the western part of the Mississippi Territory to form a Constitution and State

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[6] Thompson, *loc. cit.*

[7] *The Washington Republican and Natchez Intelligencer*, Jan. 1, 1817.

[8] *The Washington Republican and Natchez Intelligencer*, Jan. 22, 1817.

Government, and for the admission of such state into the union on an equal footing with the original States." Section 3 of the Bill established the qualifications necessary to be an elector in the choosing of the Representatives to the Convention. Section 3 states,

> "And be it further enacted, that all free white male citizens of the United States, who shall have arrived at the age of twenty-one years, and resided within the said Territory at least one year previous to the time of holding the election, and shall have paid a county or territorial tax, and all persons having, in other respects, the legal qualifications to vote for Representatives in the General Assembly of the said Territory, be, and they hereby are, authorized to choose Representatives to form a Convention . . ." [9]

Another version changes the reading slightly, it is a little more specific and doesn't leave the question of "having, in other respects, the legal qualifications to vote" aloft. It adds on an additional group of those qualified and reads

> ". . . and all persons holding lands by purchase in said Territory, and residing therein on the day of the election, be and they hereby are authorized to choose Representatives to form a Convention, who shall be appointed amongst the respective counties in the said Territory, according to the free white population thereof . . ." [10]

The Negro, even if free, was denied the right to vote. He was denied any representation in that body which was given the power to formulate the organic law of the state. He

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[9] *Ibid.*

[10] *The Washington Republican and Natchez Intelligencer*, Feb. 19, 1817.

was still considered as property, or if as a person, one without the rights of citizenship, even if he had earned them, because he was born with a colored skin. Section 4 of the aforementioned Bill gave the Convention broad powers,

> "And if it be determined to be expedient, then the Convention shall be, and they are hereby authorized to proceed to form a Constitution: Provided, That the said Constitution shall be Republican and not repugnant to the principles of the Constitution of the United States; which Constitution so formed shall be presented to the Congress of the United States at their next session, the same shall be valid as the Constitution, or form of government to be erected in the Territory aforesaid." [11]

A body of white men would elect Delegates to a Convention of white men, which would represent the views of the white man. This body would shape and form the organic law which would apply to all men, colored and white. It was a body which would create a government of white men over all.

The Hon. William Lattimore questioned whether the will of the people would be indicated by the Convention. After ascertaining that the counties that would meet comprised only a fifth part of the population of the Territory, he concluded that only a tenth part of all the free males of the Territory would bear any weight as being represented in the Convention. He remarked that whatever be the general will of the people in relation to this question (of Statehood), it is not satisfactorily indicated by what either the Legislature or the Convention have expressed.[12] At least there

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[11] *Ibid.*

[12] *The Washington Republican and Natchez Intelligencer,* April 16, 1817.

were some, who did question the unrepresentative and discriminatory manner in which the whole affair was being handled.

George Poindexter was eventually appointed as Chairman of a Committee of 21 Members charged with drafting a State Constitution. The question of who shall have the right of suffrage was important in their deliberations. The Constitution, when completed, had a very conservative suffrage provision. However, this was not done before some liberal views had been expressed on the matter. Tho. B. Reese, a Delegate from Adams County, expressed to his constituency through the newspaper the following:

> "It is in the Constitution, that the great principle of the elective right, or as it is called the elective franchise, is to be established. This is one of the most interesting questions that can come before a free and enlightened people. The abuse of it produces anarchy and the entire absense of it produces, despotism. The undue restriction of it does injustice to many persons, who bear the burdens and fight the battles of the country. I think, therefore, the rights of the Constitution (?) in this respect, ought to be as liberal and extensive as they could be (?) and not qualifications of property . . . . when a man has the competence (?), and is, in truth, a citizen, are contrary to the plainest and most fundamental principles of the social compact. I should therefore carry with me to the Convention, a determination to secure to every citizen, who had the proper age and had contributed, either by services or money to the support and defense of the country, the right to have a voice, by his representatives in making the laws that are to govern him." [13]

[13] *The Washington Republican and Natchez Intelligencer*, May 28, 1817.

These, however, were not the views of the majority of the Delegates who framed the Constitution of 1817. Several of the Delegates argued that the establishment of some of the principles of representation as proposed by Mr. Poindexter were adverse to the great doctrines of representative democracy—that it was a complete acknowledgment of the right of the minority to govern the majority. . . .[14] In the end, these views lost out to those of Poindexter, which were included in the final Constitution signed on August 15, 1817.

The Mississippi Constitution of 1817 contained rather conservative restrictions on the elective franchise. Article 3 Section 1 established the qualifications that an individual must have in order to be able to vote. Suffrage was limited to

> "Every free white male person of the age of twenty-one years or upwards, who shall be a citizen of the United States, and shall have resided in the State one year preceding an election and the last six months within the county, city or town in which he offers to vote, and shall be enrolled in the militia thereof, except exempted by law from military service; or having the aforesaid qualifications of citizenship and residence, shall have paid a State or county tax, shall be deemed a qualified elector: no elector shall be entitled to vote except in the county, city or town (entitled to separate representation) in which he may reside at the time of election."[15]

The first Constitution of the State of Mississippi thereby denied the ballot to the free Negro because of the color of

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[14] *The Washington Republican and Natchez Intelligencer*, July 26, 1817.

[15] *Mississippi Constitution of 1817* as printed in *The Washington Republican and Natchez Intelligencer*, August 23, 1817.

his skin. Even if he could meet all of the other qualifications needed to become an elector, his color barred him from participation at the polls.

This restriction of the elective franchise to free white persons seems on its face to contradict the principles of the Declaration of Rights as established in Article 1 of the Constitution. Article 1 Section 1 of the Declaration of Rights states

> "That all free men when they form a social compact are equal in rights; and that no man or set of men, are entitled to exclusive, separate public emoluments or privileges from the community, but in consideration of public services." [16]

The Conclusion of the Declaration of Rights of Article 1 of the Constitution of 1817 demonstrates the high regard with which these principles were considered. The purpose of the Declaration is

> "To guard against transgressions of the high powers herein delegated, We Declare, that everything in this article is excepted out of the general powers of government, and shall forever remain inviolate, and that all laws contrary thereto, or to the following provisions, shall be void." [17]

The idea of granting equal rights to all free men was a highly regarded principle. The limitation of the franchise to all free white men does indeed appear to violate this principle. The enumeration of the census as authorized by the Legislature does show that there were freemen or free persons of color. But the time was not ripe to consider them

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[16] *Ibid.*

[17] *Ibid.*

citizens entitled to the rights thereof, even if they were free, and even if they were so few in numbers.

The Convention further restricted the suffrage in Article 9 which establishes the general powers. Section 5 of Article 9, sets forth these limitations as follows:

> "Laws shall be made to exclude from office, and from suffrage, those who shall thereafter be convicted of bribery, perjury, forgery or other high crimes or misdemeanors. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper conduct." [18]

No legislation was passed to put these restrictions into effect until a few years later.

On December 10, 1817, Mississippi was formally admitted to the Union as a State, equal in status to those admitted earlier. The Mississippi State Legislature in 1822 finally enacted laws to put into effect the Article 9 restrictions of the 1817 Constitution. The 1822 legislation states:

> "No person shall vote at any election whatever in this State who shall have been convicted by the verdict of a jury, and the final judgment or sentence of a court of competent jurisdiction, of bribery, perjury, forgery, or other high crime or misdemeanor, unless the person so convicted, shall receive a full pardon for such offense." [19]

Many of the municipalities had election laws which were not as restrictive as those established by the State. In most

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[18] *Ibid.*

[19] Thompson, *op. cit.*, p. 32.

towns from 1818 to 1830, municipal elections were open to "free white male citizens of the town above the age of 21 years." In many cases there were property qualifications and in order to be eligible to vote in municipal elections, one had to be a freeholder, landholder or householder, who had paid a tax. Sometimes a residence requirement of three or six months was established. However, an analysis of all this will show that under the Constitution of 1817, "color" was not a qualification or a disqualification in municipal elections.[20] In eight of the towns of the State legislated upon by the State Legislature to establish municipal election laws, viz: Shieldsborough, Greenville, Holmesville, Columbus, Vicksburg, Rodney Raymond, and Washington; color or lack of it, was not a qualification needed to gain the franchise. Of course, slaves were not freeholders or citizens, but free Negroes were frequent freeholders and in some communities were regarded by many as citizens.[21] As to how many free Negroes actually did vote in these elections, one cannot say. One can only accept the following statement of Franklin L. Riley, made in the Publication of the Mississippi Historical Society in 1898:

> "Free persons of color, however, as I learn, did claim the right in some of these towns and it was generally conceded by those of the white men whose interest was on the side of the claimant's political preference, but was generally denied by the opposition, and it is donbtful if a negro ever voted in any of them until after the war." [22]

In 1830, tribal government was abolished, and the Indians were defined as citizens. They were placed under State

[20] *Id.*, p. 34.

[21] *Ibid.*

[22] *Id.*, p. 35.

law. Even the chiefs themselves had to be elected. Presumably, the Indians were allowed to vote in other elections, too.

A popular referendum held in August, 1831, established the fact that the people wanted a Constitutional Convention. The Legislature ordered in December, 1831, that an election be held in August, 1832, for Delegates. The Constitutional Convention, presided over by P. Rutilius R. Pray, a judge of the State Supreme Court, assembled on September 10. The Constitution completed on October 26, 1832, was the most democratic in the State's history.[23] It was as good as a vote for Jackson, so closely did it follow the political ideas of the President.[24]

The Constitution of 1832 extended the franchise to many who had not had it before. There were few states which had as liberal voting requirements as Mississippi. Property ownership was no longer either a direct or indirect requirement for voting. However, free Negroes were still denied the right to vote. The suffrage provision of the Constitution stated that

> "Every free white male person of the age of twenty-one years or upwards, who shall be a citizen of the United States, and shall have resided in this State one year next preceding an election, and the last four months within the county, city, or town in which he offers to vote, shall be deemed a qualified elector . . ." [25]

Another section of the Constitution, like that of 1817, excluded those who had been convicted for certain crimes from the suffrage.

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[23] John K. Bettersworth, *Mississippi: A History* (Austin, Texas: The Stack Co., 1959), p. 178.

[24] *Ibid.*

[25] *Mississippi Constitution of 1832.*

> "Every person shall be disqualified from holding an office or place of honor or profit under the authority of this State, who shall be convicted of having given or offered any bribe to procure his election. Laws shall be made to exclude from office and from suffrage those who shall hereafter be convicted of bribery, perjury, forgery, or other high crimes or misdemeanors." [26]

The organic law of the State, though considerably liberalized, still did not treat the free male Negro as a citizen. The Constitution did have one major effect on the Negro population of the State. It forbade bringing slaves into the State for sale. The color line remained as a guard to protect the polls. Again, the principles stated in the section on individual rights were contradicted by the section on the elective franchise.

The State Legislature on March 2, 1833, passed legislation putting into effect the constitutional disqualification from the suffrage for conviction of certain kinds of crimes. This legislation said that

> "No person shall vote at any election whatever in this State, who shall have been convicted by the verdict of a jury and the final judgment of a court of competent jurisdiction, of bribery, perjury, forgery, or other high crimes or misdemeanors, unless the person so convicted shall have received a full pardon for such offense." [27]

The State Legislature also passed the laws governing the various municipal elections. In a majority of cases it was provided that the voter should be a qualified elector of the State, or state and county, and that he should have resided within the municipal limits a specified period of time. This length of time varied from ten days, the shortest, to two

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[26] *Ibid.*

[27] Thompson, *op. cit.*, quoting the act of the Mississippi Legislature of March 2, 1833.

years, the longest. However, there were communities where color was not a disqualification for suffrage in municipal elections. Several of these, such as Jackson or Seven Pines, prescribed a two years' residence requirement. The principal purpose in most cases for the long residence requirement was to exclude the transient Negro vote.[28] The Legislatures of the period did not feel that they were bound to require all of the constitutional qualifications as essential of municipal suffrage. For this reason, the qualifications necessary for municipal suffrage varied widely from city to city. The State Legislature first required a registration of voters in an Act passed in 1839. It applied to municipal elections and only in Vicksburg.

The foregoing Acts summarize the pre-Civil War voting laws in Mississippi. The Negro, even if a free male person, was not considered a citizen. He did not have either the right or the privilege of the franchise. He had no legal standing under the Constitution and laws of the State of Mississippi.

II.

The Civil War ended in April 1865. With the fall of the Confederacy, the end of an era had come. A way of life had been destroyed by force of arms. A Provisional-Governor, Sharkey, was in control of the State. A new Constitution had to be written; a new government had to be formed. The tenor and attitudes of this government would have to contend with the many new problems which had arisen. Loyalty to the Federal Union and to its victorious cause was demanded. Such a transition wouldn't be easy. Yet it was one with which the Mississippian and his government must deal.

All through the war and after, the Mississippian had kept his previously held attitude with regard to Negro suffrage.

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[28] Thompson, *op. cit.*, p. 39.

Benjamin Humphreys, later that year, after being elected Governor of Mississippi, made the following statements in his inaugural address. They exemplify this attitude. Humphreys said,

> "Several hundred thousand of the negro race, unfitted for political equality with the white race, have been turned loose upon society; and in the guardianship she may assume over this race she must deal justly with them and protect them in all their rights of person and property. The highest degree of elevation in the scale of civilization to which they are capable, morally and intellectually, must be secured to them by their education and religious training, but they cannot be admitted to political or social equality with the white race." [29]

The transition of thought demanded, was not forthcoming on the part of the native white citizens of Mississippi. Meanwhile, the freedman pressed for the rights that he considered due him. In June, 1865, before the all-white election of Delegates to the Constitutional Convention, a number of freedmen gathered in a mass meeting at Vicksburg and drew up resolutions condemning the exclusion of "loyal citizens" from the election, and appealing to Congress to refuse readmission to Mississippi until she voluntarily enfranchised the Freedman.[30] Provisional-Governor Sharkey on July 1, called for elections to a State Convention to be held in August. The right to vote in the election would be limited to white male citizens. At the same time, Sharkey reappointed all local officials.

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[29] The Southern Historical Publication Society, *The South in the Building of the Nation*, Vol. II of *A History of the Southern States* (Richmond, Va., 1909), p. 430.

[30] Vernon Lane Wharton, *The Negro in Mississippi 1865-1890* (Chapel Hill: University of North Carolina Press, 1947), p. 140.

The Constitutional Convention of 1865 convened in April. One of the questions to be discussed by the Convention was Negro suffrage. President Johnson had sent a telegram to Governor Sharkey suggesting that it might be expedient to extend the franchise to all freedmen "who can read the Constitution of the United States, and write their names, and also to those who own real estate valued at two hundred and fifty dollars, and pay taxes thereon." [31] The President expressed the hope that the Convention would confer the suffrage upon the Negroes as a means of foiling the policy of the radicals, who he said, were then pressing for Negro suffrage.[32] However, the members of the convention did not wish to grant that right.

The Convention did not draft an entirely new Constitution. It repudiated secession and all the laws of the Confederacy. In addition, the Convention abolished slavery and guaranteed certain civil rights to Negroes. The sentiment of the Convention was in favor of acquiescing to Emancipation, and leaving the status of the Negro as a citizen to be determined by each state.[33] It was to be the duty of the new Legislature to deal with the problems created by the Emancipation of the Negro from his slavery.

The Mississippi Legislature of 1866 was elected in the old manner, with Negroes not voting. This Legislature enacted a code of Negro legal rights. The code was the so-called "Black Codes" and was designed to stop vagrancy and force the freedman to go to work. At the same time, the new Legislature refused to ratify the Thirteenth Amend-

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[31] Alfred Holt Stone, "Mississippi's Constitution and Statutes in Reference to Freedmen, and Their Alleged Relation to the Reconstruction Acts and War Amendments," *Publications of the Mississippi Historical Society*, IV (1901), p. 152.

[32] Frank Johnston, "Suffrage and Reconstruction in Mississippi," *Publications of the Mississippi Historical Society*, VI (1902), p. 143.

[33] The Southern Historical Publication Society, *op. cit.*, p. 429.

ment to the Constitution of the United States in light of what the Convention of 1865 had done in repudiating slavery.

During 1866, however, the Radicals in Congress pushed through a Civil Rights Bill and passed the Fourteenth Amendment. This Amendment undertook to guarantee the vote to the Negro and to disfranchise a large number of former Confederates. The Second, Third, and Fifth Sections of this Amendment were written for this purpose. They state the following:

> "Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial Officers of a State, or Members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.
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> "Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an Executive or Judicial Officer of any State, to support the Constitution of

the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

"Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." [34]

The Congress at that time unofficially made ratification of this Amendment a requirement for the readmission of a State to the Union.[35]

At a special session of the Mississippi State Legislature, 1866-1867, however, the Representatives and Senators refused to ratify the Fourteenth Amendment on the ground that "the voting class should not be swollen by sudden and large infusions of ignorance and prejudice." [36] How much actual ignorance would be added to the electorate is open to question. One can only accept the statement made by a Legislator, who was familiar with the ante-bellum Legislature. He said, "So great was the illiteracy in some sections of the State that many of their Representatives before the reconstruction—or rather rebellion, which is the proper term to use—could not sign their names to the Legislative payrolls except by a cross." [37]

In 1867, Congress passed the Reconstruction Act requiring each Southern State, before re-admission to the United States, to frame a new Constitution granting Negro suffrage

[34] The Fourteenth Amendment to the Constitution of the United States, adopted July 21, 1868.

[35] Betterworth, *op. cit.*, p. 318.

[36] The Southern Historical Publication Society, *op. cit.*, p. 431.

[37] Hiram W. Lewis, Watertown, South Dakota, 10 April 1900, letter to James W. Garner, Illinois Technological Institute, File of letters to James W. Garner, Department of Archives and History, Jackson, Miss.

and to ratify the Fourteenth Amendment.[38] A large portion of the white adult male population was disfranchised by the Fourteenth Amendment because of participation in the War. July, 1867, brought efforts in Mississippi to register voters under the Congressional plan. The registration of voters under the Reconstruction Acts was the duty of the military commander. Under the order of General E. O. C. Ord, military Commander of Mississippi, an election was to be held to elect Delegates to a Constitutional Convention to begin January 9, 1868. The Delegates were to be elected by the male citizens of the State, twenty-one years old and upwards, "of whatever race, color or previous condition of servitude," residents for one year, and not disfranchised.[39]

Registration of voters began in July. Many of the Negroes entered enthusiastically into the political activity.[40] The efforts made by elements of the white population to prevent the Negroes from registering were general enough to cause Ord to issue a warning, but such efforts seem to have had little effect. To the registration offices, as later to the polls, the Negroes generally came in large groups. Many whites were disqualified, while the Negroes were invariably allowed to register. As the registration proceeded, it was shown in September that 60,167 Negroes and 46,636 white men had been allowed to qualify as voters. Thirty-three of the State's sixty-one counties had majorities of Negro registrants. These results of the registration came as a distinct shock to the white citizens, and added to the number of those who were determined to stand to the last against Negro suffrage.[41]

In November, an election was held to decide whether the people wished to proceed with a Constitutional Convention

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[38] Act of March 3, 1867. c 153, 14 Stat. 428.

[39] The Southern Historical Publication Society, *op. cit.*, p. 431.

[40] Wharton, *op. cit.*, p. 144.

[41] *Id.*, p. 146.

or to remain under military rule. As might be expected, the overwhelming majority of the registered voters favored the calling of the Constitutional Convention. The result was a vote of 76,016 in favor of the Convention and of only 6,277 against. The Constitutional Convention assembled on January 7, 1868. The Convention known as the "Black and Tan Convention" had seventeen Negroes among its hundred members. Of its total membership, only nineteen of the Delegates were Democrats. The Constitution written by this body was quite democratic and met all of the demands required by Congress for re-admission of Mississippi to the Union.

The Constitution adopted by the Convention had broad provisions for the protection of individual rights. Article I of the Constitution which stated these rights contained the following Sections of guarantee:

> "Section 1. All persons resident in this State, citizens of the United States, are hereby declared citizens of the State of Mississippi.
>
> "Section 2. No person shall be deprived of life, liberty, or property, except by due process of law.
>
> "Section 6. The right of the people to peaceably assemble and petition the government on any subjects, shall never be impaired.
>
> "Section 18. No property or educational requirement shall ever be required for any person to become an elector."[42]

The guarantees provided for were the most sweeping in the State's history. For the first time, all men, whether white or black, were to have constitutional guarantees. Whether

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[42] Mississippi Constitution of 1868 printed in the *Journal of the Proceedings in the Constitutional Convention of the State of Mississippi 1868* (Jackson: E. Stafford, Printer, 1871), Article 1.

one was white or black, he was to have legal rights. The color line was being broken.

The article on franchise, Article VI, adopted by the Constitutional Convention of 1868, was probably the most important and most publicly controversial issue before the body. These provisions on the franchise were adopted:

"Section 1. All elections by the people shall be by ballot.

"Section 2. All male inhabitants of this State, except idiots and insane persons, and Indians, not taxed, citizens of the United States, or naturalized, twenty-one years old and upwards, who have resided in this State six months, and in the county one month next preceding the day of election, at which said inhabitant offers to vote, and who are duly registered according to the requirements of Section 3 of this Article, and who are not disqualified by reason of any crime, are declared to be qualified electors.

"Section 3. The Legislature shall provide for the registration of all persons entitled to vote at any election, and all persons entitled to register shall take and subscribe the following oath or affirmation: I, ..., do solemnly swear (or affirm), in the presence of Almighty God, that I am twenty-one years old; and I have resided in this State six months, and in .... county one month; that I will faithfully support and obey the Constitution and laws of the United States, and of the State of Mississippi, and will bear true faith and allegiance to the same; that I am not disenfranchised in any of the provisions of the acts known as the Reconstruction Acts of the 39th and 40th Congress; and that I admit the political and civil equality of all men; so help me God;" Providing, that if Congress shall, at any time, remove the disabilities of any persons disenfranchised in the said Reconstruction

Acts of the said 39th and 40th Congress (and the Legislature of this State shall concur therein), then so much of this oath, and so much only, as refers to the said Reconstruction Acts, shall not be required of such person, so pardoned, to entitle him to be registered.

"Section 4. No person shall be eligible to any office of profit of trust, or to any office in the militia of this State, who is not a qualified elector.

"Section 5. No person shall be eligible to any office of profit or trust, civil or military, in this State, who, as a member of the Legislature, voted for the call of the Convention that passed the Ordinance of Secession, or who, as a Delegate to any Convention, voted for or signed any Ordinance of Secession, or who gave voluntary aid, countenance, counsel or encouragement to persons engaged in armed hostility to the United States, or who accepted or attempted to exercise the functions of any office, civil or military, under any authority or pretended government authority, power, or Constitution, within the United States, hostile or inimical thereto, except all persons who aided reconstruction by voting for this Convention, or who have continuously advocated the assembling of this Convention, and shall continuously and in good faith advocate the Acts of the same; but the Legislature may remove such disability; Provided, that nothing in this section, except voting for or signing the Ordinance of Secession shall be so constructed as to exclude from office the private soldier of the late so-called Confederate States Army.

"Section 6. In time of war, insurrection or rebellion, the right to vote at such place, and in such manner as shall be prescribed by law, shall be enjoyed by all persons otherwise entitled thereto, who may be in the actual

> military or naval service of the United States or this State; Provided, Said votes be made to apply in the county or precinct wherein they reside." [43]

The Sections adopted requiring the "test Oath" and the statement by the registrant saying that he believed in the "civil and political equality of all men" were particularly offensive to many whites. After being passed by the members of the Convention, the Constitution was given to the voters of the State for ratification in an election held from June 22 to June 30. The Constitution was defeated by 8,629 votes. Presumably, it was the sections of the franchise article which caused the defeat. It should be noted, however, there was widespread intimidation of the Negroes which assured the defeat of the Republicans and the rejection of the Constitution.

At the same election, new sets of State Legislators and State Officials were chosen. However, since there was no Constitution in existence, they were unable to take office. There were many claims of election fraud, made to the United States Congress with regard to the defeat of the Constitution. These claims caused the Senate and the House of Representatives to undertake investigations of the Mississippi elections of 1868. The reports may be found in the Congressional records of 1869.

On July 13, 1869, President Grant called for another balloting on the Constitution to be held in the following November. There would be more than 100,000 registered Negroes and more than 70,000 registered whites eligible to vote in the election.[43a] In that election, the objectionable portions of the Constitution were submitted separately, and all were defeated. The remainder of the Constitution was overwhelmingly approved. Again, elections to fill the State

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[43] *Id.*, Article VI.

[43a] Wharton, *op. cit.*, p. 157.

offices were held. But this time, the elected officials were able to take their positions.

Mississippi came out of the struggle for a new Constitution with rather liberal voting requirements. The Constitution of 1869 was the first in the history of the State of Mississippi to permit the Negro to vote. Not only was the Negro enfranchised, but he comprised a majority of the electorate of the State. The Negro had entered into politics with an enthusiasm which was rewarded by granting him almost immediately control of the political power of the State.

The Negro had won the early battle of Reconstruction. However, a principal goal of the Mississippi whites in the Reconstruction legislation of 1867 had been the practical re-enslavement of the colored man. Indeed clever laws might assure the dependency of the Negro without placing on the whites many of the paternalistic burdens which had resulted from the old system of slavery.[44] Such actions by the whites had pointed up the difficulty of defining a status for the Negro under the United States Constitution anywhere between slavery and citizenship.[45] The policy of the Federal Government in its reconstruction enactments and amendments to the Constitution was intended to secure the colored man in his rights as a citizen.[46] The Federal power and philosophy of Reconstruction prevailed in this jousting between the State and National Governments. The Mississippi whites' bitter purpose to give the colored man no standing or recognition by which he might have even the semblance of a freedman had been overruled. A former Military Governor of Mississippi commented on the situa-

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[44] H. T. Fisher, Cleveland, Ohio, 21 Dec. 1899, letter to James W. Garner, Illinois Technological Institute, File of letters to James W. Garner, Department of Archives and History, Jackson, Miss.

[45] *Ibid.*

[46] *Ibid.*

tion by saying, "The country was with Congress which was actuated by a double motive; first, distrust of the loyalty of the men lately in arms as secessionists and second, by the conviction that it was their duty to make citizens of the slaves Lincoln had liberated. The ballot is the free man's weapon of defense—the ex-slave was to be armed with it."[47]

Following the adoption of the Constitution of 1869, despite the fact that the colored men comprised the majority of the electorate, the Negroes made no attempt to deprive the white men of their rights. Nevertheless, the white citizens of Mississippi firmly believed that the enfranchisement of the Negro was a mistake, regardless of the treatment that they themselves received. Therefore, the compulsion to remain in the Union and the Reconstruction Acts were unspeakably repulsive to most Southern white men.[49] The powerful conservative leaders, given the existing situation, began an immediate, almost frantic, campaign to bring the Negro voters under the control of the Southern whites.

Mississippi had written a new Constitution which guaranteed the Negro the right to vote, but she had not yet gained readmission to the Union. The Mississippi Legislature had not ratified the Fourteenth Amendment which was considered an essential condition of readmission, nor had it considered the ratification of the Fifteenth Amendment, which had been passed on February 27, 1869, by the Fortieth Congress and had been submitted to the States for ratification. This latter amendment was designed as a

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[47] Adelbert Ames, Lowell, Mass., 17 Jan. 1900, letter to James W. Garner, Illinois Technological Institute, file of letters to James W. Garner, Department of Archives and History, Jackson, Miss.

[48] Dunbar Rowland, *A Mississippi View of Race Relations in the South* (Jackson: Harmon Publishing Co. Printers, 1903) Read before the Alumni Association of the University of Mississippi, June 3, 1902, p. 7.

[49] Adelbert Ames, *loc. cit.*

further guarantee of the rights of the Negro to have the franchise. The Fifteenth Amendment declared that

> "Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.
>
> "Section 2. The Congress shall have power to enforce this article by appropriate legislation." [50]

In theory, at least, no State would any longer be able to place limitations on the suffrage which would discriminate against the Negroes. Thus, by the Federal law, the power which the States had possessed from the establishment of the Union, of regulating the great local and domestic subject of the elective franchise, was impaired.[51]

Beginning in 1870, "Carpetbag" control over the government of Mississippi was almost complete. The State Legislature was overwhelmingly Republican. Almost forty of its members were Negroes. The Legislature met on January 11, 1870, and promptly ratified not only the Fourteenth Amendment, but also the Fifteenth Amendment. The Legislature also chose Senators. One of the Senators chosen was Hiram R. Revels, the first Negro to sit in the United States Senate. Mississippi was now eligible for re-admission into the Union.

The Congress on February 17, 1870, passed an act re-admitting Mississippi to the Union. According to the provisions of that Act, certain fundamental conditions had to be met by the State before its representatives would be admitted to Congress. They were the following:

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[50] *Fifteenth Amendment to the Constitution of the United States*, adopted March 30, 1870.

[51] Johnston, *op. cit.*, p. 191.

"And provided further, that the State of Mississippi is admitted to representation in Congress as one of the States of the Union, upon the following fundamental conditions: First, that the constitution of Mississippi shall never be amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote who are entitled to vote by the constitution herein recognized except as a punishment for such crimes as are now felonies at common law, whereof, they shall have been duly convicted under laws equally applicable to all the inhabitants of said State: *Provided*, That any alteration of said constitution, prospective in its effects, may be made in regard to the time and place of residence of voters. Second, that it shall never be lawful for the said State to deprive any citizen of the United States, on account of race, color, or previous condition of servitude of the right to hold office under the constitution and laws of said State, or upon any such ground to require of him any other qualification for office than such as are required of all other citizens.[52] (Public Acts of the Forty-First Congress of the United States. Second Session. Chapter XIX February 23, 1870.)

This Act was approved by the President on February 23, and on that date, Mississippi once more became a State, having agreed to respect the established conditions.

The Negroes in the State Legislature sought no special advantages for their race, and in one of their very first acts, they petitioned Congress to remove all political disabilities from the whites. However, the whites were discontent with the Negro rule. The year 1870 saw the or-

[52] George P. Sanger, ed., *Public Acts of the Forty-First Congress of the United States.* Second Session. Chapter XIX. February 23, 1870 (Boston: Little, Brown & Co., 1871), p. 67.

ganization of a number of "White Men's Clubs" throughout the State. Believing that Negro suffrage was "wrong in principle and disastrous in effect", they pledged themselves to labor unceasingly, from year to year, for the restoration of white supremacy in Mississippi and in the United States.[53] The Columbus Democrat advocated the union of these groups in a revitalized Democratic Party, declaring:

> ". . . Its leading ideas are, that white men shall govern That niggers are not rightly entitled to vote, and that when it gets power, niggers will be placed upon the same footing with white minors and who do not vote or hold office . . ."
>
> "Nigger voting, holding office and sitting in the jury box, are all wrong, and against the sentiment of the country. There is nothing more certain to occur than that these outrages upon justice and good government will soon be removed, and the unprincipled men who are now their advocates will sink lower in the social scale than the niggers themselves."[54]

The political line was being drawn solely on the basis of race.

In 1871, came the first elections of local officers under the new Constitution. Many Negroes were chosen as county officers in these elections. However, in the election most of the "white counties" regained control of their own affairs. Racial antagonisms were starting to build. In the face of the decrepitude of the Democratic Party, and of the

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[53] Wharton, *op. cit.*, p. 182.

[54] *Ibid.* Quoting the Columbus *Democrat* from the *Mississippi Weekly Pilot*, Dec. 24, 1870.

certainty of Federal intervention in case of a State-wide movement based on violence, the program to regain solid white supremacy in politics was held in check during 1871, 1872, and 1873. With the great increase of office holding by Negroes after the election of 1873, however, the movement gained new strength. The Democratic party was getting stronger, while the Republican party was being left to the Negro. The great call to the white citizens of the State to unite was being raised on high. The Yazoo City *Banner* declared, "Mississippi is a white man's country, and by the Eternal God we'll rule it." [55] The *Handsboro Democrat* cried out, calling for "A white man's Government, by white men for the benefit of white men." [56]

The struggle between white and black had already begun. The whites believed that the long continued rule of ignorance and vice, which existed in their eyes and which they resented so bitterly, could have only one result—the ruin of the country and the confiscation of all property by the power of taxation.[57] The white people of the South felt that they were confronted with such a condition after seven years of Negro rule. It was a time of deep emotion and intense feeling all over the South.[58] Each white man swore a solemn oath before high Heaven that he would free himself and his posterity from the disgrace of Negro rule or die in the attempt.[59] That idea was the battle cry. The people felt that they were struggling against infamy and dishonor.[60]

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[55] Wharton, *op. cit.*, p. 184. Quoting the Yazoo City *Banner* from the *Mississippi Weekly Pilot*, July 31, 1875.

[56] *Ibid.* Quoting the Handsboro *Democrat* from the *Mississippi Weekly Pilot*, April 10, 1875.

[57] Rowland, *op. cit.*, p. 7.

[58] *Ibid.*

[59] *Id.*, p. 9.

[60] *Ibid.*

The issues of the remarkable campaign against the Negro vote were clear and well defined.

> "*First*: The negro has proven himself unworthy of suffrage, and it should be taken from him.
>
> *Second*: Negro rule is ruinous to a State.
>
> *Third*: The honest, intelligent people of a State should control it.
>
> *Fourth*: Negro suffrage has been given a fair trial with terrible results.
>
> *Fifth*: Freedom could not in a moment transform an ignorant man into an intelligent citizen.
>
> *Sixth*: The negro was being made a tool in the hands of thieves and plunderers.
>
> *Seventh*: There was not a State under negro rule that showed even a trace of honest, intelligent, government.
>
> *Eighth*: That existing conditions must be overthrown at whatever cost." [61]

The Negroes were told plainly that they would not be allowed to vote and it would be best for them not to attempt it. Nothing was concealed. The white people of Mississippi were going to exercise even the right of revolution to free themselves. They would use force, the only means in their power to overthrow what they saw as misrule, corruption, and dishonesty.

The year 1875 was to be the year of action to regain white supremacy in Mississippi. Already there were frequent conflicts between the races, the Negroes always suffering most. The attitude that the votes of the Negroes could be secured by treating them fairly and by reasoning with them was now being scorned. The time had come when the whites

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[61] *Ibid.*

were going to be more forceful. From Colonel McCardle of the Vicksburg *Herald* came the answer.

> "The way to treat Sambo is not to argue to him or to reason with him. If you do that, it puffs his vanity and it only makes him insolent. Say to him, 'Here, we are going to *carry* this election: you may vote as you like: but we *are* going to carry it. Then we are going to look after ourselves and our friends; you can look after yourself.' And he will vote with you." [62]

As a Democratic leader declared the following year:

> ". . . (The) only issue in the election was whether the whites or the blacks would predominate; there was no other politics that I could see in it. Men that had been Republicans all their lives just laid aside Republicanism and said they had to go into the ranks then." [63]

In the words of J. S. McNeilly, describing the situation:

> "It was part of the creed of a desperate condition, one easily understood, that any white man, however, odious, was preferable. . . . to any negro however unobjectionable individually." [64]

Once the general policy had been adopted that Negro and Republican control of the state government was to be broken at any cost, a number of methods were followed for its accomplishment. One of these involved the intimidation of

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[62] Wharton, *loc. cit.*, Quoting from the Vicksburg *Herald* from the *Mississippi Weekly Pilot*, May 29, 1875.

[63] *Id.*, p. 185. Quoting the testimony of W. A. Montgomery in Senate Reports, No. 527, Forty-Ninth Congress, First Session, p. 542.

[64] Wharton, *loc. cit.*, p. 185. Quoting from J. S. McNeilly "Climax and Collapse of Reconstruction in Mississippi," in Publications of the Mississippi Historical Society, XII (1912), p. 405.

those whites who still worked with the Republican party. Against the Negroes themselves one of the most powerful forces used was economic pressure. All over the state Democratic clubs announced that no Negro who voted for a Republican could hope for any form of employment the following year.[65] Lists of Negroes who were pledged for or against the party were prepared; and arrangements were made for "checkers" to be present at the polls. After the election, the names of Negroes marked for discharge from employment were printed in the various papers, along with the names of those who deserved special consideration for having refrained from voting or for having worked with the Democrats.[65a] In some cases doctors announced that they would no longer serve Negroes who did not vote for the Democratic ticket. These were the more subtle methods of securing the election victories. By intimidation, by social and economic ostracism, by drawing the color line, by discharge from employment and forced resignations: by all of these methods the whites were going to regain complete political supremacy.

At first, the Negro was intimidated and frightened from the polls. Even more successful was the use of threats and actual violence. Urged on by newspapers and political leaders, young men all over the State formed militia companies. Democratic clubs provided themselves with the latest style of repeating rifles. With this powerful military force at its command, the "White Democracy" was ready for its campaign against a mass of Negroes who were timorous, unarmed, and largely unorganized.[66]

The Negroes fell easy prey to the white tactics of violence. Negro political leaders were warned that another speech would mean death. Negroes were prevented from

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[65] *Ibid.*

[65a] *Id.*, p. 186.

[66] Wharton, *op. cit.*, p. 188.

registering by sham battles and the firing of pistols at registration points or by armed pickets who met them on the roads. Moreover, in the political, economic, and social subjugation of the freedman, the most effective weapon ever developed was the riot.[67] The lesson learned was that the Negroes largely unarmed, economically dependent, and timid and unresourceful after generations of servitude, would offer no effective resistance to violence.[68] Throughout the period, any unpleasant incident was likely to produce a "riot". During the bad feeling of 1874 and 1875, there were a great number of unpleasant incidents. After each resulting riot, Negro resistance to white domination in the surrounding area completely collapsed.[69]

The Democrats maintained complete unity of their own forces during the campaign. In addition they had drawn many whites from the Republican party into their ranks. Meanwhile, with many of their leaders dead or in hiding, the Negroes faced the proposition of either voting with the Democrats or staying away from the polls. Many Negroes chose the latter but many whites, dreading violence themselves, also stayed away and did not vote.[70] With the aid of these methods, the Democrats came very close to sweeping the State in the elections of 1875.

In 1876, the Congress of the United States saw fit to conduct an investigation of the Mississippi election of 1875. The Senate investigating committee found that "The course of the Democrats in organizing and arming themselves to resist the Governor in his efforts to preserve the public peace was unlawful, and the proceedings should have been suppressed by the State authority if possible, and, in case

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[67] *Id.*, p. 187.

[68] *Id.*, p. 190.

[69] *Ibid.*

[70] Albert D. Kirwin, *Revolt of the Rednecks: Mississippi Politics: 1876-1925* (Lexington: University of Kentucky Press, 1951), p. 7.

of failure on their part, by the Government of the United States."[71] The Committee report showed that the Democrats murdered a number of prominent Republicans, both white and black to carry the election. The members of the Committee also discovered that for many weeks before the election, members of the Democratic military organization traversed the various counties, menacing the voters and discharging their guns by night as well as day. It was stated that on the day of the election, at several voting places armed men assembled, and that such groups controlled the elections, intimidated the Republican voters, and *in fine*, deprived them of their opportunity to vote the Republican ticket. The findings were that in several cases, where intimidation and force did not result in securing a Democratic victory, fraud was resorted to in conducting the election and in counting the votes. The Committee determined that the contemporary Legislature of Mississippi was not a legal body, and that its acts were not entitled to recognition by the political department of the Government of the United States. The report of the investigating committee to the Senate concluded by stating:

> "The evidence shows, further that the State of Mississippi is at present under the control of political organizations composed largely of armed men whose common purpose is to deprive the negroes of the free exercise of the right of suffrage and to establish and maintain the supremacy of the white-line democracy, in violation alike of the Constitution of their own State and of the Constitution of the United States.
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> "The events which the committee were called to investigate by the order of the Senate constitute one of the darkest chapters in American history . . .

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[71] *Congressional Record*, Forty-Fourth Congress. First Session. Vol. IV. July 29 to August 15, 1876, p. 5276.

"They refused to accept the negro as their political equal, and for ten years they have seized every fresh opportunity for a fresh opportunity for a fresh denial of his rights. At last they have regained supremacy in the State by acts of violence, fraud, and murder, without its honor, dignity, generosity or justice.

"By them the negro is not regarded as a citizen and whenever he finds a friend and ally in his efforts to advance himself in political knowledge or intellectual culture, that friend and ally, whether a native of the State or an immigrant from the North, is treated as a public enemy. The evil consequences of this policy touch and paralyze every branch of industry and the movements of business in every channel . . . "[72]

"They have secured power by fraud and force, and, if left to themselves, they will by fraud and force retain it. Indeed the memory of the bloody events of the campaign of 1875, with the knowledge that their opponents can command, on the instant, the presence of organized bodies of armed men at every voting-place will deter the Republican from any general effort to regain the power wrested from them. These disorders exist also in the neighboring states, and the spirit and ideas which give rise to the disorders are even more general.

"The power of the National Government will be invoked, and honor and duty will alike require its exercise. The Nation cannot witness with indifference the domination of lawlessness and anarchy in a State, with their incident evils and a knowledge of the inevitable consequences. It owes a duty to the citizens of the United States residing in Mississippi, and this duty it must perform. It has guaranteed to the State

[72] *Id.*, p. 5280.

of Mississippi a republican form of government, and this guarantee must be made good." [73]

The Committee suggested that the measures necessary and possible in such an exigency were three:

"1. Laws may be passed by Congress for the protection of rights of citizens in the respective States.

2. States in anarchy, or wherein the affairs are controlled by bodies of armed men, should be denied representation in Congress.

3. The Constitutional guarantee of a republican form of Government to every State will require the United States, if these disorders increase or even continue, and all milder measures shall prove ineffectual, to remand the State to a territorial condition, and through a system of public education and kindred means of improvement change the ideas of the inhabitants and reconstruct the government upon a republican basis." [74]

The Congress never saw fit to pass any of the measures and thereby Reconstruction came to an end in Mississippi.

The "Revolution" of 1875 placed the control of the State government in the hands of the Democrats, men sworn to preserve the principles of home rule and white supremacy.[75] Proscription of the large Negro vote was the natural result of the white victory. When the Democratic legislature met in January of 1876, it quickly completed the work by impeaching the Lieutenant-Governor, and by securing the resignations of the Governor and the Superintendant of

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[73] *Ibid.*

[74] *Id.*, p. 5281.

[75] William Alexander Mabry, "Disfranchisement of the Negro in Mississippi," *The Journal of Southern History*, IV No. 3 (August, 1938), p. 318.

Education. This ended the "Political Revolution" successfully. Essentially, it was a racial struggle.[76] Finally in preparation for the Congressional and Presidential elections of 1876, the Legislature passed a complicated election law.

Under the new system established by these election laws, registration of voters was placed in the hands of local boards appointed by the Governor, the President *pro-tem* of the Senate, and the Secretary of State. Of the prospective voters, the regulations were:

> " . . . (to) require each voter to state, under oath, in what election district of the county he resides . . . , and in what portion of said district; and if resident in any incorporated city or town, in what ward of said city or town; and his occupation, and where prosecuted, and if in the employ of any one, whom, where, and the nature of employment." [77]

A number of local boards carried the matter to the extreme of demanding that the Negroes know the section, township and range in which they lived and worked. At the first incorrect answer or confession of ignorance, the prospective registrant was ordered to "stand aside".[78]

The approach of the election of 1876 brought in many sections, a return to the methods of 1875. In general, the Democratic leaders prevented the Negroes from voting. "Never in radical times," said an observer, "was more fraud and intimidation practiced." [79] The election was a "complete farce", but even so, it was said, "Enough votes were

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[76] Wharton, *op. cit.*, p. 197.

[77] *Id.*, p. 199. Quoting the Mississippi Session Laws, 1876, pp. 66-77.

[78] Wharton, *op. cit.*, p. 200.

[79] Kirwin, *loc. cit.*, Quoting from the Jackson *Daily News*, January 1, 1877.

put in to elect the Independents but by some means were not counted." [80] Many of the registered voters dreading the violence stayed away from the polls. Senator Lamar of Mississippi sanctimoniously attributed all these election malpractices to the opposition; but other Democratic leaders admitted that they had used repression, intimidation, and other . . . illegal devices . . . to overcome the negro majority." [81] Again, the election tactics of the Democratic leaders were victorious, bringing a sweep of the State.

The men who came into power with the overthrow of the radical government in 1875-1876 are frequently referred to as "Bourbons". The Bourbons were supposed to be those who "never forgave and never forgot"; and who all agreed in their determination to "control . . . the Negro vote to insure the continuation of white supremacy." [82] During the Bourbon regime in Mississippi, the Negro took little or no part in politics. However, what Negro votes there still were, were courted by the Democratic press. The Jackson *Clarion* became an enthusiatic supporter of Negro suffrage, pointing to the increased representation in Congress and in the Electoral College which had come to the South as a result of Emancipation and enfranchisement.[83] Again, this was done only to get and to control the Negro vote. The Negro could not use his vote, but his vote could be used.

In the political machinery of the State, election officials had become only slightly less important than party officials.

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[80] *Ibid.* Quoting from the Jackson *Weekly Clarion*, November 29. 1876.

[81] Kirwin, *op. cit.*, p. 8. Quoting the Jackson *Weekly Clarion*, Nov. 22, 1880.

[82] Wilkie D. Halsell, "The Bourbon Period in Mississippi Politics, 1875-1890," *The Journal of Southern History*, XI (1945), p. 521-22.

[83] Kirwin, *op. cit.*, p. 15.

A State Board of Election Commissioners, composed of the Governor, Secretary of State, and Attorney-General, appointed county boards, consisting of "three discreet persons" not all of the same party. The state board also appointed a registrar in each county to register the names of the voters. The registrar was appointed for a four year term. County election commissioners were appointed two months before each Congressional election and held office for two years unless removed. The county election commissioners appointed three managers for each election district, not all of the same party, and had appellate jurisdiction over decisions made by the registrar. The managers were to see that the election was conducted fairly and agreeably to law, and were to be the judges of the qualifications of electors presenting themselves at the polls.[84]

The local election officials occupied positions of great power. By encouraging some to register and by discouraging others, they could influence elections. The choice of the election commissioners by State officials "made all things possible."[85] Thousands of opposition votes were thrown out on technicalities. Fraudulent returns were frequently made. If necessary, ballot boxes were stuffed. Unfairness on the part of election officials was repeatedly charged, not only by Republicans and Independents, but in the few cases where the opposition had gained control, by regular Democrats. The Secretary of the Republican State Committee on the campaign of 1876 said, "It is obvious that such arrangements are well calculated to deprive many citizens of an opportunity to register and vote."[86] The following year a prominent Democrat of Hinds County charged R. H.

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[84] *Mississippi Laws*, 1876, Chapter LXVII, Ibid. Code 1880, Chapter LVI, Code 1880, Secs. 121, 124, 128, 133, 138-140.

[85] Kirwin, *op. cit.*, p. 36.

[86] Lake to Stone et al., Aug. 7, 1876; W. A. Percy to St. Board of Registrars, August 14, 1876, Letters of Governors, Series E, 128a.

Reeves, the Hinds registrar, with "fraudulent action" in registering unqualified voters and in refusing to register some who were qualified.[87] Mississippi politics and its corruption continued in this vein until 1890. The continuous succession of Democratic victories in state elections is ample proof of the effectiveness of the Democratic tactics. For fifteen years, it seemed more expedient to control and suppress the Negro vote than to try to reduce it legally.[88] Comparatively few Negroes were voting. In fact, fewer and fewer voted each year. Those Negroes who did vote, by and large voted Republican; or if they did vote Democratic, their votes were controlled by the few white men in the district. By 1881 when Senator Lamar concluded that the blacks were more estranged from the whites than ever and that they were not able to "assimilate with our political habitude and methods," the end of an era, and of a "Revolution", was dawning.[89]

The late 1800s brought with them the call for a Constitutional Convention. This call marked the end of the successful revolution against the Negro and Reconstruction which had begun in 1875. The "Revolution" had accomplished its purpose, complete white supremacy had been returned to Mississippi. The 1875 upheaval had been a united action by an overwhelming majority of the white people motivated by a feeling of necessity. The Negroes' rights were taken away "not because they were radicals", but because a class of men, whose leaders were themselves radicals when it paid to be, undertook to supersede the administration of law "so far as it applied to the colored popu-

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[87] Lawry to Faulconer, November 3, 1877, Letters of Governors, Series E, 135a.

[88] Mabry, *op. cit.*, p. 318.

[89] J. T. Wallace, *A History of the Negroes in Mississippi from 1865 to 1890* (Clinton, Miss. 1927), p. 148.

lation."[90] The rebellion of 1875, virtually trampled the State government under foot by armed resistance and murder. This was immediately followed by open defiance of the Constitutional Amendments; by the wholesale disfranchisement of the colored man;[91] by almost all of his civil rights being effectively denied. Such was admitted by Governor Ames, years later, when he said, ". . . As my puny efforts were failures, so have become the Reconstruction Acts of Congress; and in making free and equal citizens, Lincoln's Proclamation Emancipating the slave."[92]

III.

In the decade of 1880 to 1890 it became apparent that the "Mississippi Plan" of dealing with the black majorities would, unless checked, pollute the very sources of Republican Government.[93] Symptoms of the diseased political condition grew so acute that the demand for suffrage restriction to effect an electorate under which there could be white supremacy through honest elections became quite imperative.[94] On the part of many whites there was a desire to be free from the necessity of fraud and intimidation theretofore found necessary at the ballot box.[95] A Constitutional Convention if called, could write a new Constitution for the State. This document could effectively solve the problem of disfranchising the Negro without on its face violating

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[90] Kirwin, *op. cit.*, p. 23.

[91] Fisher, *loc. cit.*

[92] Ames, *loc. cit.*

[93] J. S. McNeilly, "History of the Measures Submitted to the Committee on Elective Franchise, Apportionment, and Elections in the Constitutional Convention of 1890," *Publications of the Mississippi Historical Society*, VI, (1902), p. 130.

[94] *Ibid.*

[95] J. P. Coleman, *The Origin of the Constitution of 1890*, Reprinted from The Journal of Mississippi History, April 1957, p. 81.

the prohibitions of the Fourteenth and Fifteenth Amendments. This was to be the plan of action. However, the efforts to get a Constitutional Convention between 1876 and 1890 failed because a majority of the white people seemed firmly convinced that a Convention would be unable to work out a plan to disfranchise the Negroes so completely as to give the whites a majority of the electors of the State. Many of the most thoughtful men, not being able to foresee what a Constitutional Convention might achieve, feared that an effort to limit Negro suffrage would bring evils upon the State in the way of adverse Congressional legislation and federal administrative proceedings.[96]

During this period there was growing resentment against the low ebb of political morality in the State which was closely related to the illegal suppression of a large percentage of the black vote. The white election officials, who were accustomer to cheating Negroes at the polls, were not above cheating whites as well. In 1886, this resentment caused sentiment in favor of a Constitutional Convention to be sufficiently strong to induce the Legislature to pass a resolution calling for a Convention. Governor Robert Lowry vetoed the measure on the grounds that it was inexpedient to take such a step. Furthermore, the Governor expressed the opinion that the proposed Convention was fraught with evil, and if carried out according to the terms of the Act, would prove disastrous to the people of the State.[97] He said that the time and circumstances for dealing with the fundamental law were inopportune, and that when the question of qualifying suffrage was touched, that of labor became involved. This he felt, would produce a storm of excitement that had not been witnessed in Missis-

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[96] Coleman, *op. cit.*, p. 72-73. Quoting Judge Robert H. Thompson from a speech made May 2-3, 1923 to the Mississippi Bar Association in Biloxi, Miss.

[97] Coleman, *op. cit.*, p. 74.

sippi politics before.[98] In other words, a Constitutional Convention would simply cause too much political strife in the State.

In 1888, the agitation for a Convention was revived. That year brought the overthrow of the Republican control of the muncipal government of Jackson. In January of 1888 that overthrow involved a revival of all the tactics of intimidation which had been in use in 1875.[99] So successful were these methods that only one Negro in the entire city even attempted to vote. The events of this election further stimulated the movement which was going on throughout the State for the complete elimination of the Negro voter. The attitude of the white Mississippian of the period can easily be seen in the speech of that State's Senator on August 27, 1888. He spoke of the Jackson election:

> "And, sir, even if the proof had shown that the effect of the action of a few young men, under circumstances of great aggravation and intense excitement, was practically to disfranchise the negro voters of the city, at that single election, their treatment of those voters without law was no harsher than other negro voters had received in this very city through the forms of law, without the same provocation or extenuation . . .
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> "I do not believe there is a Senator here who would not, if he lived in that State, put forth all his powers to avert the horrors of black supremacy, and save his own people if he could from the calamities of such a curse. And I do not believe there is a white community in any Northern State, which if in our condition, would tamely and meekly submit to a reign of ignorance and

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[98] *Id.*, p. 75.

[99] Wharton, *op. cit.*, p. 202.

venality under which honorable white men of intellect and substance would be excluded from all the high places of official trust in the State, and all the possessions and most sacred interests of their race brought under the rule uneducated, undisciplined, and irresponsible negroes." [100]

In the demand for a Constitutional Convention and the elimination of the Negro voter, the jealousy of the white counties, disgust with machine control and constant fraud, a determination to open the political field to controversial questions, the rising power of the prohibitionists, and prejudice against a "Black and Tan" constitution all played a part.[101] But there can be little doubt that the most powerful factor in the desire for a legal elimination of the Negro voter was the change that had occurred in Washington.[102] In 1889, for the first time since 1875, the Republicans gained effective control of all the departments of the national government. Alarmists did not fail to find evidence that the Republican triumph in the nation had once more aroused the Negroes in the State.[103]

The Democratic State Convention in 1889 nominated John M. Stone for Governor. He was known to favor the calling of a Constitutional Convention. The party conclave adopted the following resolution: "We recommend that the question of a convention be made an issue before the people in the coming election, so that they may be enlightened by the discussion, and that the Legislature

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[100] Edward C. Walthall, *The Race Problem in Politics*, Speech in the Senate of the United States, August 27, 1888. Printed in Washington, 1888, p. 18, p. 32.

[101] Wharton, *op. cit.*, p. 208.

[102] *Ibid.*

[103] *Ibid.*

elected govern itself accordingly." [104] Since there was great unity in the Democratic Party, and since the Democratic candidates were sure to carry the election, the action of the party convention could have only one meaning. In the words of the Memphis *Daily Avalanche* it meant that "It is certain that the State of Mississippi will call a Constitutional Convention, perhaps next Spring, the principal object of which will be to settle this matter in a practical manner. Negro suffrage in Mississippi is an encumbrance upon the State which cannot much longer be endured." [105]

At this point there arose a dispute on the issue of the Constitutional Convention and of Negro disfranchisement between the two Senators from Mississippi. Senator James Z. George enthusiatically favored the Convention and the taking of the vote from the Negro. On October 16, 1889, Senator George spoke at Greenville where he emphasized the seriousness of the suffrage problem and the necessity for the continued supremacy of the white race. He declared himself to be unequivocally in favor of a new Constitution. On October 21, 1889 Senator George addressed a gathering in the hall of the House of Representatives in the Old Capitol. He was quoted in the Jackson *Clarion-Ledger* as saying, "Our chief duty when we meet in Convention, is to devise such measures, consistent with the Constitution of the United States, as will enable us to maintain a home government, under the control of the white people of the State." [106] He further pointed out that "Mr. Jefferson thought that the people should have the privilege of remedling the Constitution once in every generation, which he estimated to be nineteen years." Finally, he added, "If the white people of Mississippi

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[104] Mabry, *op. cit.*, p. 320.

[105] Coleman, *op. cit.*, p. 82. Quoting Memphis *Daily Avalanche* of August 14, 1889 edit.

[106] *Jackson Clarion-Ledger*, October 24, 1889.

cannot be trusted to remodel a Constitution . . . we are already lost."[107] The State's other Senator, Edward C. Walthall, spoke to a group in the same hall on October 28, claiming that none could point out any remedy for the evil of Negro suffrage. He said, "While the Federal Constitution remains unchanged, white supremacy cannot be made permanent in Mississippi by any ordinance a state convention can adopt." He further argued that a campaign for delegates to the convention would renew the "largely abated" interest of negroes in political affairs.[108] These two issues, the Constitutional Convention and Negro disfranchisement, were left to the voters of the State to decide in the forthcoming election.

The outcome of the November election may be interpreted as a triumph for the advocates of suffrage reform.[109] Stone became Governor of the State, and, in February, 1890, the Legislature issued a call for a Constitutional Convention to be assembled in Jackson on August 12 of that year. The stage was now set; only the issues awaited clarification.

Before the Convention was called, there had been opposition in the newspapers to the plans of the Democratic leaders to take the vote from the Negro. The Natchez *Democrat* had condemned the various plans for disfranchising the Negro as proposals "To remove the temptation by legalizing the fraud."[110] The *Clarion-Ledger* had denied that an additional guarantee of white supremacy was needed by the state or could be provided by the convention.[111] But now, after the call, again and again, Democratic leaders and Democratic editors declared that white sovereignty was the only point at issue and that all others must be suppressed as dangerous to the dominant race. Somehow, the

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[107] *Ibid.*

[108] Coleman, *op. cit.*, p. 86.

[109] Mabry, *op. cit.*, p. 321.

[110] Kirwin, *op. cit.*, p. 50. Oct. 1889, Jan. 1890.

[111] *Id.* Jan. 26, 1888, Oct. 31, 1889.

Negro must be eliminated as a political factor in Mississippi.

There was also much concern with regard to both the methods which had been used to secure election victories and the after-effects of such techniques. These practices were putting "Too great a strain on the public conscience."[112] There was concern as to the effects which these methods were having on the new generation of young men who were beginning to take a leading part in the politics of the State. The general belief was that this new generation, not understanding the terrible necessity which caused the introduction of such methods, would consider them a normal form of political action.[113] Colonel B. F. Jones wrote to the *Clarion-Ledger*, "The old men of the present generation can't afford to die and leave their children with shot guns in their hands, a lie in their mouths and perjury on their souls in order to defeat the negroes. The Constitution can be made so this will not be necessary."[114] This feeling can best be summarized in the words of Judge R. H. Thompson:

> "The controlling factor in increasing the desire for a new Constitution was one creditable to the citizenship of the State: it was this: Thoughtful men saw quite distinctly that the way elections were being carried corrupted the morals of the people, especially the young men, and brought into disrepute the purity of the ballot box, the fundamental basis of American conceptions in government. Bad as the domination of a negro majority of voters had proved itself to be, the then prevalent way of preventing it led to serious evils and rendered efforts to escape the consequences of both

[112] Kirwin, *op. cit.*, p. 59.

[113] Wharton, *op. cit.*, p. 207.

[114] *Ibid.* Quoting the Port Gibson *Reveille*, May 23, 1890.

> imperative. Something had to be done and many men who had previously opposed a Constitutional Convention by 1890 became the advocates of a convention, trusting that by God's aid the State might be relieved from its deplorable situation." [115]

The only solution was the elimination of the necessity of fraud of "ring-control" in the black counties, and the reduction of the strength of those counties in the government of the State.[116]

It has been authoritatively stated that by 1890, Mississippi's Democratic Congressmen were "ready to give enthusiastic support to any scheme that would put a legal face on the elimination of the negro vote." [117] The threat of Federal intervention in elections presented by Republican control in Washington seemed to many to be the strongest sort of argument for putting a stop to the illegal tactics used to disfranchise the Negroes. It virtually necessitated the substitution of constitutional or statutory provisions to accomplish the same end.[118] The Southern Congressmen protested vigorously against this new threat to home rule, but could scarcely deny the charge hurled by their Republican opponents: that great numbers of Negroes were being illegally deprived of the right to vote.[119] The Lodge (Force) Bill in Congress which would permit some federal control in states where voting rights were being denied met strong Southern oppositon. But Senator Lodge said in his own defense, and it could not be denied by the Southern opposition, that "The negro is not thrust from his rights merely

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[115] Coleman, *op. cit.*, p. 81. Quoting Thompson, Mississippi Constitution of 1890, p. 9.

[116] Wharton, *loc. cit.*

[117] *Jackson Clarion-Ledger*, March 13, 1890.

[118] Mabry, *op. cit.*, p. 322.

[119] *Id.*, p. 321.

because he is ignorant and unfit to use them, as is certainly charged, but because his skin is black . . . "[120] In Mississippi at the time, it was urged as a part of wisdom to imbed the restrictions on Negro voting in her organic law before the passage of a "Force Bill" could be effected. Such action would prevent the State political power from again being subverted by an Act of Congress and military despotism.[121] Admittedly the primary purpose of the Convention would be to devise a legal method for safeguarding the political supremacy of the white race in State and local politics.

The Negroes in Mississippi were by no means oblivious to the major purpose for which the Convention was called. About the middle of June, Negro Republican Delegates from forty counties held a meeting in Jackson, and a committee prepared an address to President Harrison protesting against the suppression of the colored vote. A bold indictment of the whites of the State was made: ". . . it is not due to an apprehension that the blacks would dominate the whites that fraud and violence are resorted to in popular elections in this State. It is due, however, to a well-formed apprehension, that but for the inauguration and enforcement of such methods, the Democratic Party would be defeated."[122] The Democrats did not remain silent. To the Negroes of the State was issued a warning that the Democrats were preparing through means of the Convention, to shape the election law to their needs; and then "the policy of crushing out the manhood of the negro citizens is to be carried on to success."[123] The editor of the *Clarion-Ledger*

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[120] *Congressional Record*, Fifty-First Congress, First Session, p. 6544. June 26, 1890.

[121] McNeilly, *op. cit.*, p. 131.

[122] Mabry, *op. cit.*, p. 323. Quoting the *Jackson Clarion-Ledger* of July 4, 1890.

[123] *Ibid.*

commented on the assembly of the Negroes saying, "It will do no harm . . . , because the negroes cannot be persuaded to 'fight a cyclone.' It is well understood that the Convention will be composed exclusively of whites."[124] This, however, was not the understanding of the Negroes. In a few counties they did go through the formalities of selecting candidates for the Convention. After a few days of active campaigning by one of those selected by the Negroes, F. M. B. Cook, his body was found, riddled with bullets. The death of Cook offered convincing evidence that the Democrats did not intend their warnings to be ignored. The few efforts at organized opposition vanished, and the rest of the campaign was uneventful.[125] In August, the Delegates were chosen in an election that drew fewer votes than any since the War. The total vote cast for the Delegates from the State at large was about 39,000.[126]

As the time for the Constitutional Convention came near, abstract discussion of the evils of Negro suffrage and the dangers inherent in the "Force Bill" gave way to concrete proposals for restricting the suffrage in the interest of the white race. The principal ones were these: the Australian ballot system; an educational prerequisite for voting; and increased poll tax to be paid before registration; a change in the basis of representation in the white counties; a property qualification for voting; plural voting by property holders; woman suffrage; longer residence requirements for voting; and examination and certification of fitness for voting by a Commissioner. A prominent national magazine, *The Nation* said, with reference to the suffrage and the Constitutional Convention: "What is desired is one which will cut off most of the negroes from the suffrage, and at

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[124] *Jackson Clarion-Ledger*, June 26, 1890.

[125] Wharton, *op. cit.*, p. 211.

[126] *Jackson Clarion-Ledger*, August 14, 1890.

the same time will not disfranchise any considerable number of whites—and this is a difficult result to secure." [127] This is the change in suffrage that the Mississippi whites and their leaders wanted from a Constitutional Convention, and it is with this goal in mind that they met to secure their purpose.

There were 1,289,600 persons in Mississippi in 1890, of whom 742,559 were Negroes and 544,851 were white.[127a] Of the total numbers of whites and Negroes, there were 189,884 registered Negro voters and 118,890 registered whites.[128] When the Constitutional Convention met with its one hundred and fifteen members, on August 12, uppermost in the minds of the revisers was the desire to eliminate, or at least, curtail, voting by the Negroes. Only four of the representatives were not Democrats, and only one of them was a Negro.

Judge S. S. Calhoon, who on August 12, was elected President of the Convention, had spoken at length on both of these issues earlier in 1890.

> "This civilization, let it not be forgotten, is a White Civilization. Otherwise they must destroy, or govern the whites because in association, one race or the other must and will rule as a race. With the solitary exception of the Moors, who governed Spain for about eight centuries the other races have been ruled by the whites, whenever political contact has occurred, and, by an inescapable natural law, they must continue to be so ruled, in political association, by the only race which has manifest a spirit of Progress . . .

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[127] Coleman, *op. cit.*, p. 71.

[127a] *Ibid.*.

[128] *Jackson Clarion-Ledger*, September 16, 1890, p. 1 Col. 4 Speech of Isiah Montgomery.

"The other races here should have and be secured in every possible right under the laws which the whites enjoy, but to share in the great and delicate power of government, no . . .

"We are liberal, and properly so, but it seems a serious blunder to share the governing power with Indians, Malays, Mongols, or negroes . . .

"The right to the ballot and the principle of no taxation without representation had, originally, reference only to the race which organized, and was responsible for the nature and enlightenment of its own government . . ."

"The Black Race. Is it safe, or wise, for this race to exercise the right of suffrage here, that its members should have the power to nullify an equal number of white votes, debauch our civilization and nullify our grand achievements? . . .

"The point now is whether it is safe or not, and for the real good of either race, that any of the other four distinct types of manhood should share in governmental control with the Caucasian . . .

"The lives, property, labor and liberty of the blacks should be fully protected, as they will be, but it should not be required that the South should be governed by another race . . .

"Joint government by distinct races means the exclusion of the minority race . . . Each, by a law of nature fixed and unmovable will vote to exclude the other . . .

"Negro suffrage is an Evil, and an evil to both races. Its necessary outcome is that conflicting aspirations and apprehensions must produce continual jars and frequent hostile collisions, which do not occur with homo-

geneous races. It has been tried for over twenty years and only heart-burnings and violence are said to have resulted . . .

"It will not do to familiarize the Federal power with supervision of the ballot in the States. Better to disfranchise one or the other of the races in the South at once; yes, better to disfranchise the whites there, and expatriate them, than to familiarize the central government with interference in the States. It is to be determined whether or not there shall be a continual festering sore on the body politic, continual bickering animosities and strife . . .

"Shall the ballot remain as now adjusted, the whole country, in the meantime, taking the chances of the rapid increase of the blacks, and leaving, in the meantime, the whites as they are now, in those localities where they are outnumbered? . . ."

"The difficulty lies not in the ignorance of the negroes for a large part of the whites are ignorant of government affairs, which they will not take the trouble to comprehend. It lies in the principle of human nature before referred to, and the want of homogeneity in the races, and this nothing can so far overcome or modify as to make safe, political affiliation . . .

"Repeal of the constitutional clause conferring the ballot is of course the only sweeping and certain remedy. Of course I do not suppose this will soon be adopted and I hope the course of the black race may be that it will never be absolutely necessary but if they continue to put everything on a race issue, the time will come when the white race of all sections will yield to necessity and have repeal . . .

"There is no politics in the South now, save the race question. Her people naturally adhere to any National party which is the least threatening in the encouragement of black domination. Why should the negro have this dangerous power of suffrage? He had freedom suddenly thrust on him . . .

"The President well called attention, in his inaugural address to the danger of suffrage bestowed freely on immigrants, even of our race, from foreign countries. He is right in this caution and the danger is greater in bestowing it on another race which can never amalgamate or be homogeneous with the Caucasian . . . There was no warrant for his expecting to share in the governing power, nor was there any promise or previous design. To so share will jeopardize his own future and that of the whites. If he brings his own reason to bear on his condition he must see that his future is better assured without the ballot . . .

"It is for him to say whether this is preferable to unending troubles from a desire to interfere with a white-man's government, and to impress his opinions on a white civilization . . .

"But in politics the two races are as wide apart as the poles, and they will always remain so, solidly, race opposed to race." [129]

Both the desire and the rationale for disfranchising the Negro existed. Now Calhoon and the other members of the Convention had to develop the methods and plans for achieving that end. One of the earlier pre-convention proposals was the possible use of the Australian ballot system for elections. The *Clarion-Ledger* said of that proposal:

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[129] S. S. Calhoon, *Negro Suffrage* (Jackson: Commonwealth Steam Press, 1890), printing of a speech made in Jackson, Mississippi, February 22, 1890.

> "The Australian ballot system is excellent, and after careful inquiry of persons, who know how it works in other States, we urge our Convention to adopt it . . . The ignorant and prejudiced vote is shut out, and there is no longer the slightest dread of the negro vote. On the contrary, the negro realizes that he is no longer an important factor in politics and is growing more and more indifferent." [130]

What was necessary and what was desired were plans like these which would accomplish the goal without violating the United States Constitution.

The Constitutional Convention of 1890 commenced on August 12 with the following prayer:

> "May this organic law here carefuly and prayerfully framed stand the test of the years with no more moral taint upon any of its provisions, affording the amplest protection to the humble citizen, preserving the integrity of our traditional liberties and be a bond of union and interest to a peaceful, prosperous and happy people. To this end we pray that the Convention may be delivered from pride of personal opinion and prejudices; and may it be inspired by a supreme—a divine desire—to benefit the entire people of this commonwealth." [131]

This was to be the spirit which was to guide the Convention. However, the divine deliverance from pride of personal opinion and prejudices lasted not even through the first day of meetings. Prejudice and pride of personal opinions were to be the guiding lights of the Convention members from that day and for the duration.

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[130] *Jackson Clarion-Ledger*, July 31, 1890, p. 1.

[131] *Journal of the Proceedings in the Constitutional Convention of the State of Mississippi*, of 1890 (Jackson, 1891).

Judge S. S. Calhoon was chosen President of the Convention on August 12. He then proceeded to give the following address.

> "There is no man who hears me who does not understand that the individuals of the opposite race are his friends in all the various transactions of life. There is no black man or colored man in the State of Mississippi who does not feel that in all the business of life the whites are his friends. That is one statement that is true; how is it then gentlemen that we cannot have political homogenity?
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> "It arises gentlemen, . . . , in that principle of human nature that any of the five distinct races encounter each other in the matter of government, that from the instinct implanted in its nature, it desires to be in the ascendency . . .
>
> "This ballot system must be so arranged as to effect one object, permit me to say for we find the two races now together, the rule of one which has always meant economic and moral ruin: we find another race whose rule has always meant prosperity and happiness to all races. . . .
>
> "We must never pass any ordinance of course that will work any injustice or oppression, but be full of benefit to all the citizens of this State and those who are to come. The policy must be so just and necessary that ruin shall not result but we shall have prosperity for all if possible. . . . That is the great problem for which we are called together . . . "[132]

This speech was to set the tone for the rest of the Convention. The speaker did not say plainly, that the task was

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[132] Journal, *op. cit.*, p. 326.

to find a way of bestowing political authority permanently upon a minority of the people, but there is no other fair intrepretation of his words.

Two other important persons must be mentioned before examining the work of the Convention itself. The less important of the two was Robert C. Patty of Noxubee County. Patty was made Chairman of the Committee on Elective Franchise, Apportionment, and Elections. The aspirations of Patty of Noxubee County, only one among many white counties and generally representing the views of those counties fitted in nicely with the plan of Senator George to assure a continuance of white supremacy in the state by giving the predominance in the legislature to the white counties.[133]

The other important person who must be considered is Senator J. Z. George. He had yielded to the general demand throughout the State that he accept a seat in the Convention. He was urged to give his State the benefit of his wide familiarity with State Constitutions as well as advice on the delicate questions of constitutional law involved in the exclusion of the Negro from the suffrage.[134] He declared as his unalterable conviction that any white man similarly situated would entertain and make the basis of his action the assumption that good government, peace, law and order, and the civilization of the Southern States required and demanded that the virtue and intelligence of the superior race should rule. The only safety for their civilization lay in protecting the State from universal negro suffrage.[135] Senator George was to lead the faction at the

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[133] Mabry, *op. cit.*, p. 326.

[134] James W. Garner, "The Senatorial Career of J. Z. George," *The Publication of the Mississippi Historical Society*, VII (1903), p. 255.

[135] Johnston, *op. cit.*, p. 238.

Convention which was determined to eliminate the Negro voters without barring the illiterate whites, to reject all property qualifications, and to reduce the representation of the black counties.

Early in the Convention the issue of which methods would be used to disfranchise the Negro were debated. Before any specific limitations on the right of suffrage could be passed, the questions of whether the State and the Convention had the legal right to establish such restrictions had to be answered. The Judiciary Committee had been given the following mandate:

> "Resolved: That the Judiciary Committee be requested to make a special report at as early a day as possible upon the effect of the Act of Congress re-admitting Mississippi into the Union, limiting the right of franchise and otherwise prohibiting the State from changing the Constitution of the State of Mississippi, adopted in 1869, so far as the said act shall affect the work of this Convention." [136]

The Committee made its report on August 22. The first thing it had to consider was Article I, Section 2, Clause 1 of the United States Constitution, which states:

> "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the qualifications requisite for Electors of the most numerous Branch of the State Legislature." [137]

The Judiciary Committee determined the meaning of this Section to be:

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[136] Journal of the Constitutional Convention, *op. cit.*, p. 83.

[137] Article I. Section 2. Clause 1. United States Constitution.

"The entire subject of the franchise as to who shall have it, and the qualifications of the elector are left to the absolute and unrestricted discretion of the State. There was not uniformity then, there was not in 1870 the date of the re-admission Act, nor does it exist now.

"But who shall vote at the Congressional election—whether both sexes or one, and at what age, whether the electors shall own property, whether educated or not; is left precisely where it was placed by the second section of the same article (1)." [138]

Next, a consideration of the Fourteenth Amendment was made. The following conclusions resulted:

"The Fourteenth Amendment in terms recognizes the right of the States to determine who shall vote—by those clauses which reduce the representation, if any male citizens of the United States and of the State, are exclused from franchise as a class . . .

Contemporary history shows that the clauses of this Amendment which relate to the franchise were inserted to give the State the choice of retaining the colored race, as part of the electoral body with full representation or its exclusion with diminished representation.

It is plain in the opinion of the Committee, from this section of the Constitution, that Congress cannot confer suffrage, cannot make a voter, and that we must look to the several States, and their laws and Constitutions to ascertain who are legally competent to vote for Federal elective officers, as those of the State." [139]

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[138] Journal of the Constitutional Convention, *op. cit.*, p. 84.

[139] *Id.*, pp. 84-85.

The Committee then dealt with the Fifteenth Amendment, saying:

> "The Fifteenth Amendment has but one operation, and was engrafted in the Constitution for the single purpose of laying an inhibition on the State, of discrimination against the colored man, because of race or previous condition of servitude.
>
> The State has just as large discretion in regulating the franchise as it had before its adoption, with the single limitation, that the regulations which it prescribes shall apply to both races." [140]

Several Supreme Court interpretations of these two Amendments were considered by the Judiciary Committee.

> "*United States* v. *Reese,* 92 U. S. 215, involved the interpretation of these Amendments, as they affected the franchise. Court language was "The Amendments do not confer the right to vote on any one. They only give the right to be exempted from discrimination on account of race, color, or previous condition." (1875)[141]
>
> In *Cruikshank* (1875), "The right to vote comes from the State, but the right of exemption from the prohibited discrimination comes from the United States." [142]

Lastly, the Judiciary Committee reported its legal interpretation of the validity of the restrictions placed upon the right of Mississippi to change the suffrage provisions of its Constitution by the Act of Congress of February 23, 1870, re-admitting the State to the Union. These provisions were interpreted by the committee to be unconstitutional.

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[140] *Id.*, p. 85.

[141] *Ibid.*

[142] *Ibid.*

> "There can hardly be a conception of unequal states in the Union. Unequal in the scope of their law-making, executive and judicial powers. It would not be contended that the Federal Government could impose limitations on the political sovereignty of one State, which was not common to all, or that it could alter or change a clause or section in a Constitution presented by a State claiming admission or restoration to the Union." [143]

Of course, the Judiciary Committee did not consider another possible interpretation, *viz.;*

> "There seems no good reason to doubt that Congress had the power to demand any condition precedent to the recognition that a Southern State was at peace with a legitimate Government. To deny this is simply to deny that Congress had the authority to carry on the war." [144]

By this report, the legal question on the State's rights to alter the suffrage provisions was resolved. It was decided that the Convention could alter the Article of Franchise of the Constitution of 1869 without violating the Constitution of the United States or constitutional acts passed subsequent to it by the Congress. However, the Convention did have absolute restrictions placed on it by the Fifteenth Amendment which prevented disfranchisement of the colored man as a class. This prohibition was to be dealt with by a resolution offered by Mr. Dabney which had a preamble providing for a request to Congress to submit to the several States a proposition to repeal the Fifteenth

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[143] *Id.*, p. 86.

[144] A. C. McLaughlin, "Mississippi and the Negro Question," *Atlantic Monthly*, Dec. 1892, p. 830.

Amendment. A committee was appointed for the purpose of studying the feasibility of such an action.

> "Sir, it is no secret that there has not been a full vote and a fair count in Mississippi since 1875, that we have been preserving the ascendancy of the white people by revolutionary methods. In other words, we have been stuffing ballot boxes, committing perjury, here and there in the State carrying the elections by fraud and violence. The public conscience revolted, thoughtful men everywhere foresaw that there was a disaster somewhere along the line of such a policy as certainly as there is a righteous judgment for nations as well as men. No man can be in favor of perpetuating the election methods which have prevailed in Mississippi since 1875 who is not a moral idiot."[145]

Those are the words of Judge J. B. Chrisman, expressing the conditions which had to be ended by the Constitutional Convention of 1890. But the dilemma that the Convention had to solve was that of choosing the best method to accomplish this end. Throughout the Convention there was a bitter struggle between black and white counties. The former wanted educational and property qualifications with which to limit suffrage, whereas the latter opposed such restrictions. The white county faction under Senator George, was determined to eliminate the Negro voters without barring the illiterate whites, to reject all property qualifications, and to reduce the representation of the black counties. Their opponents under Judge Chrisman, supported the general idea of property and educational qualifications applied honestly to black and white alike. Judge Chrisman sarcastically expressed the white county view of

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[145] Coleman, *op. cit.*, p. 82 (Quoting Judge J. B. Chrisman in the convention as reported in the *Jackson Clarion-Ledger*, Sept. 11, 1890.

the problem when he said, "To avoid the disfranchisement of a lot of white ignoramuses we can't have an educational qualification, and to pander to the prejudices of those who have no property, we cannot have a property qualification." [146]

During the struggle between the factions of the black and white counties, many different plans were presented and proposed for limiting Negro voting. Among these were suggestions for the adoption of a system which would include the Australian ballot, the poll tax, and registration. The Memphis *Appeal* commented favorably on such a system, recommending it to the people of Mississippi.

> "Greater than all else, the system has given a practical, Constitutional, happy solution of the race problem, and for this reason the *Appeal* would earnestly recommend it to the careful consideration of the good people of Mississippi, who are about to meet in Jackson for the purpose of making a new Constitution for their State. It has demonstrated beyond all peradventure that the ignorant negro, he who is the trusted camp-follower of the Republicans cannot be induced to vote. In the first place only a few register, and of these, only a few are energetic enough to pay their poll tax. If the preliminaries are attended to, only the intelligent among them can vote." [147]

A proposal was made to give property owners of land of a certain value multiple votes. It was said that this would give the whites the balance of power in the State. There was some agitation for a resolution such as the following to give the ballot to certain classes of women:

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[146] Kirwin, *op. cit.*, p. 66.

[147] *Daily Clarion-Ledger*, August 11, 1890, column 4, page 1.

"The Legislature of this State shall have power to confer the elective franchise on all women who are citizens of the State and of the United States, twenty-one years of age and upwards, who own in their right, over and above all incumbrances, property listed for taxation of the value of $500 or upwards or who being widows, own jointly with their own or their husband's children, property of said value listed for taxation; or who are capable of teaching first grade public school in this State, as now prescribed by law, and who have never been convicted, and shall not be thereafter convicted of any crime or misdemeanor, and not pardoned therefor, to such extent, and under such restrictions and limitations as it may deem proper to describe." [148].

The *Clarion-Ledger* favored such a plan when it said:

"Other considerations aside, does it seem just that the intelligent, refined women of Mississippi, who hold property and pay taxes upon the same, should be denied the right to say what sort of officers we shall have, when the right of suffrage is exercised by thousands of thick-lipped sons of Ham who can neither read nor write and who own not a dollar's worth of property? Is it right that intelligence and purity should be denied a voice in the government simply because of a difference in sex?

"A female provision would increase the white Democratic vote by about 30,000 and would undoubtedly give us the balance of power. The time has come for prejudice to give place to reason." [150]

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[148] Journal of the Constitutional Convention, *op. cit.*, pp. 202-203.

[150] *Daily Clarion-Ledger*, August 25, 1890, p. 1, column 4.

Suggestions were made with regard to property, education, residence and registration as ways to eliminate the Negro voter. The best and final methods for taking the franchise from the Negro had not yet been found. There were still many questions and many different plans. The struggle was continuing, the problem had not been solved, but there was no more intellectual fodder with which to work. The goal was the same; the answer would be found; it must be. But the freedom and liberty must remain, for as was said by the Memphis *Appeal*:

> "(I)t is well the largest liberty should be allowed the members of the Constitutional Convention now in session at Jackson, Mississippi: to present their resolutions suggesting sections of the proposed Constitution, . . . The problem before the Jackson Convention is most complex, but upon its solution the happiness of Mississippi depends. Is it right and necessary that the affairs of the State should be directed and controlled by intelligent suffrage? There can be only one answer to the question. History teaches that if the Government should be intrusted to the blacks, bankruptcy will be inevitable. That is absolute truth. Therefore the mission of these Delegates at Jackson has its reason in the necessity of protecting the State from black domination, which means the domination of ignorance. No proposition submitted to the Convention thus far seeks to make any discrimination among citizens because of "race, color, or previous condition of servitude." The only desire is to keep forever the Government under the control of those competent to govern, to the end that the State may proceed tranquilly along the road to high prosperity upon which she has started so confidently and so auspiciously." [151]

[151] *Daily Clarion-Ledger*, August 23, 1890, p. 1, col. 4.

An additional legal question had to be answered by the Judiciary Committee before the Convention could go ahead with its plan to eliminate the Negro vote. That question was whether or not the work of the Convention in revising or framing a Constitution required for its validity, ratification by a vote of the people. Certainly the Negroes, who would be disfranchised, and the discontented whites would vote against the new Constitution. These two groups had enough voting power to defeat such a Constitution and to prevent major changes from being made in the franchise provisions. On September 4, the committee made its report to the Convention in which it concluded:

> "The proposition that the work of a Constitutional Convention in revising or framing a Constitution requires for its validity, a ratification by a vote of the people, has no support in any principle of Constitutional law, and is merely a political theory or doctrine which has in some of the States acquired authority from usage. The doctrine has never prevailed in this State, and has here, no sanction from usage . . . and with the exception of the single instance of the Constitution, the fruit of the reconstruction legislation of Congress, no Constitutional Convention has ever referred the question of adoption or rejection of its action to the people.
>
> "The view repeatedly acted on by the people of this State is, that a Constitutional Convention, called by a recognized authority, has the inherent power to give to the Constitution it may adopt complete obligatory effect without submitting it for ratification to the people, and the opposing view has not found acceptance in Mississippi, and cannot be said to have place in her Constitutional system . . .

"That Legislature, however, after defining the functions of the Convention to be "to revise and amend the present State Constitution, or enact a New Constitution"—language which imports final action, declined on a direct vote, to insert in the Convention Act a provision requiring the enacted Constitution to be submitted to the people for ratification or rejection. This action evinces an intention to leave the Convention free to exercise its recognized discretion over the subject of submission.

The Committee therefore expresses the opinion with confidence that the Convention may Constitutionally make the Constitution or Amendments which it shall adopt absolute and final without submitting the question of ratification or rejection to the qualified voters of the State." [152]

The State could disfranchise the majority of its voters without ever permitting them to express an opinion on the issue. Judge Ethridge of the Mississippi Supreme Court, later commented on this policy:

"It is certainly a dangerous and unwise practice to frame a new Constitution for the people without submitting it to the people for approval.

"Much mischief can be done by a Constitutional Convention having the power to ordain without submission and it is a risky proposition to ever submit to the rule that a body of men may without the vote of the people, overturn another fundamental law of the State." [152a]

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[152] Journal of the Constitutional Convention, *op. cit.*, pp. 148-49.

[152a] G. H. Ethridge, *Mississippi Constitution*, Jackson, Miss., Tucker Printing House, 1928, p. 421.

The situation was especially dangerous considering the intentions of the members of the Convention. It is interesting to note that since the beginning of the Nineteenth century almost the only Constitutions which have not been submitted to the people are those of the Southern States before or after the rebellion. No Northern State has established or altered a Constitution without popular ratification since 1818.[153]

One must consider the "Bill of Rights" of the Constitution before examining its additional provisions. It is the "Bill of Rights" which is supposed to establish the principles of and the basis for other parts of the Constitution. On September 5, the Convention adopted certain principles which must be considered as the basis of later provisions. These were:

"Section 1: That all political power is vested in, and derived from the people; that all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

"Section 2: That the people of this State have the inherent sole, and exclusive right to regulate the internal government and police thereof, and to alter and abolish their Constitution and form of government whenever they may deem it necessary to their safety and happiness; provided such a change be not repugnant to the Constitution of the United States.

"Section 4: That all persons resident in this State, citizens of the United States, are hereby declared citizens of the State of Mississippi.

"Section 11: That no person shall be deprived of life, liberty, or property except by due process of law." [154]

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[153] McLaughlin, *op. cit.*, p. 837.

[154] Journal of the Constitutional Convention, *op. cit.*, p. 163.

These were to be the inviolate principles of the Constitution. If one compares these principles to the goals of the members of the Convention, knowing that the members full-well intended to take the vote away from the Negro, it is most difficult to conceive that the Negroes were considered citizens, part of the whole, or even as people.

> "Within the field of permissible action under the limitations imposed by the Federal Constitution, the Convention swept the circle of expedients to obstruct the exercise of the franchise by the negro race. By reason of its previous condition of servitude and dependence, this race had acquired or accentuated certain peculiarities of habit, of temperament, and of character which clearly distinguished it as a race from that of the whites—a patient docile people,—but careless, landless, and migratory within narrow limits, without forethought, and its criminal members given rather to furtive offenses than to the robust crimes of the whites. Restrained by the Federal Constitution from discriminating against the negro race, the Convention discriminated against its characteristics and the offenses to which its weaker members were prone." [155]

Those are the words of the Supreme Court of Mississippi, spoken in 1896. The first major method of limiting Negro voting debated by the Convention was the adoption of the poll tax requirement. On September 2, the Convention considered the following resolution:

> "Section 4: A uniform poll tax of $2 is hereby imposed on every male inhabitant of the State between the ages of twenty-one and sixty years . . . to be used in aid of

[155] *Ratliff* v. *Beale*, 74 Miss. 297, 20 So. 865 (1896).

the common schools and for no other purposes; said tax to be a lien upon taxable property; the payment of the whole poll tax imposed is declared to be a qualification to vote; provided further, that no criminal proceedings shall be allowed to enforce the collection of the poll tax." [156]

Another condition was attached to make the requirement even more demanding.

"And who has paid the poll tax on or before the first day of February of the year in which he shall offer to vote, and for that next preceding, and who shall produce to the officers holding the election satisfactory evidence that he has paid said poll tax, is declared to be a qualified elector." [157]

The poll tax that would be established was therefore not a revenue measure but a measure to restrict the franchise. The Mississippi Supreme Court, discussing this issue, stated:

"It is evident, therefore, that the Convention had before it for consideration two antagonistic propositions: One, to levy a poll tax as a revenue measure, and to make its payment compulsory; the other, to impose the tax as one of the many devices for excluding from the franchise a large number of persons, which class it was impracticable wholly to exclude, and not desirable wholly to admit. In our opinion, the clause was primarily intended by the framers of the Constitution as a clog upon the franchise and secondarily as a means of revenue." [158]

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[156] Journal of the Constitutional Convention, *op. cit.*, p. 135.

[157] *Ibid.*

[158] *Ratliff* v. *Beale*, 74 Miss. 297, 20 So. 865, 869.

Therefore the poll tax was a franchise restriction aimed at one of the distinguishing characteristics which the whites had believed that the Negro had developed as a class.

> ". . . Payment of taxes for two years at or before a date fixed many months anterior to an election is another requirement, and one well calculated to disqualify the careless." [159]

Payment of a poll tax was made a prerequisite of voting largely because it was believed that the white man was more apt to pay it than the Negro.[160] Persons otherwise competent as electors could choose to pay or not, according to their desire to qualify for exercise of the voting privilege. As Mr. Coffey, of Jefferson County, said in the Convention, "The very idea of a poll tax qualification is tantamount to the State of Mississippi, saying to the negro: 'We will give you two dollars not to vote'." [161] At a time when the Negro was not in a stable economic position, this consideration became most important. Many Negroes would not pay the poll tax because they felt that the little money which they possessed would be better spent elsewhere.

There were, however, opponents to the poll tax proposal. The protests of opponents of the compulsory poll tax showed that the poll tax was intended to curtail Negro suffrage.[162] But this was not the only group opposing the poll tax. Though editors stated that the framers of the Constitution used the poll tax to exclude "a certain irrespon-

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[159] *Id.*, p. 868.

[160] Mabry, *op. cit.*, p. 333.

[161] *Daily Clarion-Ledger*, Sept. 12, 1890, p. 1, col. 4.

[162] Williams F. B., Jr., "Public Reaction to the Poll Tax as a Suffrage Requirement in Mississippi", *Journal of Mississippi History*, Vol. XVII (1955), p. 241.

sible, unstable and disturbing element from the politics of the country," some of the Delegates opposed the tax as not being a strong enough insurance measure.[163] Judge Chrisman wanted to substitute a property or educational qualification for a poll tax. He said, "All admit that this Amendment will solve the whole difficulty—will give us a clean ballot and white supremacy in subordination to the laws of this land and the Constitution of the United States."[164] However, the poll tax was adopted by the Convention as part of the franchise provisions. It was to prove to be the most effective method for disfranchising the Negro for several decades. Thus the poll tax was to be the major method in accomplishing by indirect means what the Federal Constitution forbade doing directly. In the Mississippi Convention the Delta counties had successfully insisted on the poll tax "as their *sine qua non* knowing that as a means of negro disfranchisement, it is worth all the rest."[165]

> "Question of Suffrage. How shall we disfranchise the Senagambian? The main question, after all. If every negro in Mississippi was a graduate of Harvard, and had been selected as class orator (illustrating that morbid and diseased tendence of the fanatic minds towards monstrosities), he still would not be as well fitted to exercise the right of suffrage as the Anglo-Saxon farm laborer, adscriptus glebas, of the South and West.
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> "But to the Plan. This is not a question of intelligence *per se.* — it is a question of race. The problem before

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[163] *Id.*, p. 239.

[164] *Daily Clarion-Ledger*, Sept. 9, 1890, p. 1, col. 5.

[165] C. Vann Woodward, *Origins of the New South 1872-1913*, 1951, p. 336. (Quoting Vicksburg *Commercial Herald* from the New Orleans *Times-Democrat*, Dec. 18, 1895.)

> us is how to disfranchise the Senegambian without violating the organic law of the United States, the 'Supreme Law of the Land'. My plan is educational qualification tempered by Legislative power to remove the disability." [166]

This is the attitude with which the members of the Mississippi Constitutional Convention of 1890 launched into an educational restriction on the suffrage. A delegate to the Convention expressed the following attitude:

> "No one can have a right to citizenship against the common good. . . . The wholesale enfranchisement of the negroes was wrong, not because they are not men with every natural right; but because their votes are injurious to the State. 'It is in its last analysis, a very simple problem, we have too many ignorant, thriftless voters, and not shotguns or ballot box manipulations will determine elections." [167]

The Convention could remove the threat of power in the hands of ignorant voters by adopting an educational qualification on the suffrage. The *Clarion-Ledger* was of the opinion:

> "She is practically supreme in that respect, and can really dictate to the federal Government, concerning the voters in elections.
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> "If it be true, as she claims, that the negroes as a class are too ignorant to vote, she can easily disfranchise them by exacting a certain degree of education on the

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[166] *Daily Clarion-Ledger*, August 8, 1890, p. 1, col. 6, E. H. Bustow.

[167] *Daily Clarion-Ledger*, Sept. 12, 1890, p. 1, col. 6, Rev. J. B. Gimbull.

part of all voters. This process is so simple and at the same time so complete that no room is left for discussion. A half dozen lines will cover the whole case and put an end to all danger of negro domination." [168]

As long as there was no provision adopted which would specifically violate the Fifteenth Amendment, the Delegates felt secure that the same end could be accomplished by legislating against the characteristics of the Negro as a class without incurring the wrath of the Federal Government.

With the question of an educational qualification for the suffrage, arose a great debate on the effects of such a restriction on the illiterate white citizens of the State. Many men considered that the Negro, though able to read, was not as qualified to vote as the illiterate white. In the words of one newspaper:

"The New Orleans States in discussing the suffrage plans before the Convention opposes the proposition that the voter shall be able to read, for as it says, a child twelve years old can be taught to read. The ability to read, therefore, is not a proof of intelligence, although vaguely held so in popular notion. It is far from being evidence of that kind and degree of intelligence needed in a voter. If the reading test is applied to voters of both colors it will be found elusive. The white voter is presumed to be fit to vote until the contrary appears. The black voter is presumed to be unfit to vote until he shows evidence of intelligence. The white man is intelligent though he cannot read. The negro is not intelligent though able to read. That kind of capacity that fits a man to take part in the work of government is a hereditary characteristic of the white man of this

[168] *Daily Clarion-Ledger*, August 28, 1890, p. 2, col. 2.

country, while the want of it marks the negro and his race . . .

"There is no fear of mischief growing out of the voting of illiterate white men . . . His white birthright is a capacity to understand what is going on around him. He knows what he is doing when he votes.

"In all this the negro is essentially different, so different that rules applicable to the white man become inapplicable in his case. He is not a self-governing race. He has by nature no Aryan instinct of free will and personal independence. Want of book learning cannot make the white man like him in his moral and ethnic traits; no amount of book learning can make him like the white man." [169]

A reading requirement would sacrifice white voters along with the Negroes. Some of the white county delegates were strongly opposed to such a plan as it would upset their constituencies. Other delegates were willing to sacrifice a few white voters in exchange for the guarantee of continued white supremacy in the future. Mr. McGehee of Franklin commented on this situation:

"The trouble with some of the delegates is that they are afraid if they vote for any plan to secure white supremacy, some poor white constituency may say 'I'll vote agin him next time he runs for office.' He was in favor of any plan that will insure white control—the Campbell plan, the Calhoon Plan, the Chrisman plan, or the Committee Plan—or anything else that will insure white supremacy and the rule of intelligence in Mississippi. I will vote for an educational or property qualification if necessary, even if it does sacrifice some

[169] *Daily Clarion-Ledger*, Sept. 2, 1896.

of my white children, or my white neighbors or their children." [170]

What was considered necessary was an educational qualification that would disfranchise the Negroes, and yet permit the illiterate whites to qualify. . . .

The education qualification was carefully planned in order not to run afoul of the Federal courts. An Amendment was added to the proposal that to register to vote one had to be able to read a section of the Constitution. The Amendment stated that one be able to read, "or he shall be able to understand the same when read to him; or give a reasonable interpretation thereof." The literacy test with the "understanding clause" as a loophole for illiterate whites was proposed by Mr. Harris of Hinds County, and accepted by the Committee of Franchise as a compromise. According to its proponents, the "understanding" clause was not intended to be a disfranchising clause, but rather was designed to furnish a way to qualify illiterate whites who would otherwise be disfranchised by the literacy requirement.[171] It was, of course, urged by the white county Delegates and bitterly opposed by those from the black counties. It was realized "that it may, and probably will, be put into operation so as to preclude the negro from voting, while his equally ignorant white neighbor is allowed the privilege, appears from the fact that the inability to read does not constitute an absolute basis of exclusion; for the inspectors may allow a person to vote who can understand or give a reasonable interpretation of a section of the Constitution when read to him." [172] The "understanding" clause did provide a sure and regularized means of disfranchising Negroes as well as illiterate whites, if the group in power

[170] *Daily Clarion-Ledger*, Sept. 2, 1896, p. 1, col. 4.

[171] Kirwin, *op. cit.*, p. 70.

[172] McLaughlin, *op. cit.*, p. 831.

chose to do so. Obviously the test could be as easily interpreted to admit illiterates, Negro or white, as to reject them. Certainly despite the constitutional restrictions, illiterate voters could easily be brought into the electorate by the faction in control.[173]

The section of the Constitution which originally contained these clauses read as follows:

> "Section 5: On and after the first day of January, A.D. 1896, the following qualifications are added to the foregoing: Every qualified elector shall be able to read any section of the Constitution of this State, or he shall be able to understand the same when read to him; or give a reasonable interpretation thereof. A new registration shall be made before the next ensuing election after these qualifications are established." [174]

However, R. H. Taylor of Panola County, secured the passage of an amendment to Section 5 to the effect that the educational qualification be put in force by January 1, 1892, instead of four years later. This amendment, the *Clarion-Ledger* called the "saving clause" in the entire suffrage article because "he has placed in the power of the Democrats to elect their Congressmen without Federal interference, and insured Democratic success in Mississippi." [175] Of course, the whole clause was well calculated for its double effect. First, it was said by W. S. Eskridge,

> "On the basis of the census of 1880, there is 11% illiteracy amongst the white race, whilst with the blacks the percent is seventy-six. This scheme would therefore disfranchise only eleven whites in one hundred.

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[173] Kirwin, *op. cit.*, p. 71.

[174] Journal of the Constitutional Convention, *op. cit.*, p. 136.

[175] *Clarion-Ledger*, Sept. 25, 1890.

whilst it would reduce the black vote seventy-six in one hundred. The advantage therefore, in favor of the whites would be very considerable." [176]

The automatic effect of this clause would be to disfranchise a great many more Negroes than whites, as shown by the census statistics which were readily available. And secondly, the "understanding" clause could be used to permit a large number of illiterate whites to register while the same clause could be used to deny illiterate Negroes the right of the ballot. There was a general understanding that the interpretation of the Constitution offered by an illiterate white would be acceptable to the registrars, whereas that of a Negro would not be accepted.[176a] Senator George advocated that clause as a means to secure the strength necessary in the Convention for the adoption of the Franchise Article of the Constitution. It was used by him as a *modus vivendi* in the critical period of the Convention when it was feared that no concurrence of views could be reached on any effectual measure by a majority of the Convention.[177]

There was a great deal of criticism levelled at the "understanding" clause of the Constitution. The newspapers were most critical of the chicanery which it might countenance. "Every State suffers more or less from corrupt practices at elections, but it was reserved for the State of Mississippi to make its very Constitution the instrument and shield of fraud." "We don't see where this would be any improvement of ballot box stuffing." [178] The general

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[176] *Clarion-Ledger*, Sept. 16, 1890.

[176a] *Clarion-Ledger*, Oct. 30, 1890.

[177] Johnston, *op. cit.*, p. 229.

[178] Wharton, *op. cit.*, p. 214. (Quoting Port Gibson *Revelle*, 9 Sept., 1890 and *Clarion-Ledger*, Sept. 22, 1890.)

conclusion was that the law was either fantasy or fraud, although the elimination of fraud had been one of the chief purposes in calling the Convention. The disgust was not limited to the newspapers. Some members of the Convention strongly opposed the provision. This feeling can be fairly summarized in a speech made by Mr. Eskridge:

> "My objection to this qualification I will state briefly. I fear sir, it will lead to trickery and fraud. The people of the State are looking to us expecting at our hands to settle the suffrage question on such a basis as will establish beyond doubt white supremacy and place the State above trickery and fraud at the ballot box. This is in our power to do if we have but the courage and manhood to do it.
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> "Adopt this qualification and it places in the hands of the officer who is to apply the test the power to defraud and to disfranchise. He may read to one man a very short and plain section of the Constitution and ask him if he understands it; he receiving a satisfactory answer and register him as a qualified voter, then comes the next man who cannot read; he reads to him a longer and complicated section and propounds the question, do you understand it? The voter answers unsatisfactorily, the officer says, you are not competent and refuses to register him. I give this single example as an illustration of how rather it can be worked to the great wrong of the citizen. Now, sir, is our time and opportunity (and the people are looking to us with anxious expectation) to elevate the proud Commonwealth of Mississippi above the trickery and fraud and permanently place her on a plane that will in the future protect her fair fame from destruction and defamation in the conduct of her elections." [179]

[179] *Daily Clarion-Ledger*, Sept. 16, 1890, p. 4, col. 3.

Several scholarly groups as well as individuals dared to comment on the "understanding" clause. The *American Law Review* commented:

> "It is quite apparent that this clause was never intended to be carried out faithfully. It will be so administered as to exclude negro voters, hardly one of whom will be eligible under it, and so as not to exclude the ignorant white voter. The last qualification, the ability to give a reasonable interpretation of any clause of the Constitution of the State, would exclude nearly all lawyers and judges in the State. In this manner the people of Mississippi endeavor to solve the appalling problem of carrying on civil government with a mass of voters easily corrupted and so stolid and ignorant as not to be able to understand the first principles of their political institutions." [180]

Andrew McLaughlin added his own condemnation.

> "It is apparent that an inspector may very easily reject as unreasonable an interpretation from a colored man, and accept one no better from a white man. Such discrimination would be very hard to discover. Yet that the United States government would have the legal right to prevent such virtual disfranchisement on account of race and color may be inferred, perhaps, from the decisions of the United States courts in the interpretation of the clause of Fourteenth Amendment which forbids any state from denying to any person the equal protection of the laws. The court has in more than one instance given relief where a law, valid on its face, has been so administered as to deprive certain persons of equal protection of the laws.

[180] Thompson, *op. cit.*, p. 42. (Quoting Am. Law Review of Jan., Feb. 1892.)

> "What can be done about it when there is no legal evidence as to how many are actually disfranchised, inasmuch as the new Constitution allows to vote those who can understand the Constitution or explain it? The provision is certainly a shrewd one." [181]

The members of the Constitutional Convention were indeed shrewd when they framed the educational qualifications of the ballot. A new method had been devised to sustain white supremacy and disfranchise a great number of Negroes. The educational qualification was again to become a prominent method of preventing the Negroes from registering to vote many years later when it was made more stringent. But for its day, the educational provisions of the Mississippi Constitution of 1890 were most effective.

There were several additional qualifications along with the poll tax and literacy test which were now required of the voters. These others were directed at the accentuated distinguishing characteristics of the Negroes as a class. Among them was the unusually long residence requirement. Judge H. F. Simrall urged the requirement of one year's residence in the precinct as a prerequisite for voting. He frankly explained that the reason for his proposal was the "disposition of young negroes . . . to change their homes and precincts every year." [182] The condition of residence in the election precinct for one year would exclude a large class of voters who were thriftless and who had no steady employment, people who were constantly moving from place to place.[183] It was recognized that these were characteristics which the Negro race had acquired by reason of

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[181] McLaughlin, *op. cit.*, p. 831 and p. 837.

[182] *Daily Clarion-Ledger*, Sept. 18, 1890.

[183] Johnston, *op. cit.*, p. 227.

its previous condition of servitude and dependence. Therefore, with voting qualifications aimed at these characteristics, the members of the Constitutional Convention had found another method of disfranchising the Negro without running afoul of the Federal Government.

Section 241 of the Constitution of 1890 was that part of the Franchise Article which enumerated the qualifications which were required of all voters.

> "Section 241: Every male inhabitant of this State, except idiots, insane persons and Indians not taxed, who is a citizen of the United States, twenty-one years old and upwards who has resided in this State two years, and one year in the election district, or in the incorporated city or town in which he offers to vote, and who is duly registered, as provided in this article, and who has never been convicted of bribery, burglary, theft, arson, obtaining money or goods under false pretenses, perjury, forgery, embezzlement or bigamy, and who has paid, on or before the first day of February of the year in which he shall offer to vote, all taxes which may have legally been required of him, and which he has had an opportunity of paying according to law, for the two preceding years and who shall produce to the officers holding the election satisfactory evidence that he has paid said taxes, is declared to be a qualified elector; but any minister of the Gospel in charge of an organized church shall be entitled to vote after six months' residence in the election district, if otherwise qualified." [184]

It is evident from a reading that there are many provisions which were directed against the peculiar characteristics of

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[184] The Constitution of the State of Mississippi of 1890. Article 12, section 241.

the Negro. The requirement that one must produce satisfactory evidence that he has paid all his taxes for the past two years was aimed at the careless and those unaccustomed to the preservation of records. The provision which excludes one from the franchise for having been convicted of certain crimes looked toward the furtive offenses to which the criminal members of the Negro community were alleged to be given, rather than to the more "robust" crimes of the whites.[185] The section required that in order to be a qualified elector, one must be duly registered.

The sections of the Franchise Article which outlined the registration requirements also offered protections of white supremacy in Mississippi. Sections 249 and 251 on registration provided the following guarantees:

> "Section 249: No one shall be allowed to vote for members of the Legislature or other officers who has not been duly registered under the Constitution and laws of this State, by an officer of this State, legally authorized to register the voters thereof. And registration under the Constitution and laws of this State by the proper officers of this State is hereby declared to be an essential and necessary qualification to vote at any and all elections."[186]

> "Section 251: Electors shall not be registered within four months next before any election at which they may offer to vote; but appeals may be heard and determined and revision take place at any time prior to the election; and no person who, in respect to age and residence, would become entitled to vote within said four

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[185] *Ratliff v. Beale*, *supra*, p. 868.

[186] The Constitution of the State of Mississippi of 1890, Article 12, section 249.

months, shall be excluded from registration on account of his want of qualification at the time of registration." [187]

There was a motive in making registration by the officers of the State a qualification of suffrage. This is more important than first appears. This was designed to prevent the Federal Government from stepping in to control the registration of voters.[188] This was a safeguard of white supremacy, for if Federal Officers stepped in to register voters, they would still be unable to vote under the laws of the State. Section 251 requires that the registration of voters eligible to vote in an election be at least four months prior to the election. This condition excludes many voters who are indifferent, and who take little or no interest in public affairs. This provision, like many of the others was directed at those characteristics peculiar to the Negro as a class. Judge Ethridge said of this provision, "In other words, it was part of the scheme to acquire white supremacy, and the convention was searching the field of expedients for methods to accomplish that end, which this section was one of the factors in obtaining." [189]

The Constitution provided in Section 242 that "The Legislature shall provide by law for the registration of all persons entitled to vote at any election . . . " [190] Of course, the registrars were given great discretionary power. For it was they who would determine whether an applicant to register to vote properly met the required qualifications. Registration authorities determine whether applicants

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[187] *Id.*, Article 12, section 251.

[188] McNeilly, *op. cit.*, p. 136.

[189] Ethridge, *op. cit.*, p. 435.

[190] Mississippi Constitution of 1890, Article 12, section 242.

meet literacy and understanding tests and thus had the power to function as the principal governmental agency for Negro disfranchisement. There were some very strong attacks made on this pow r To particularize, the extraordinary control of the law and the law officers over the registration and qualification of voters is a facility of oligarchy or ring-sway; which is so much subtraction from pure representative, *vox populi*, politics." [191]

There was, however, something of a saving grace in the registration provisions of the Constitution of 1890. Section 248 stated:

> "Suitable remedies by appeal or otherwise shall be provided in law, to correct illegal or improper registration and to secure the elective franchise to those who may be illegally or improperly denied the same." [192]

This means that if someone felt that he was improperly denied the right to vote he could appeal the decision of the registrar. But in actuality, this provision to insure fairness in registration of voters had little meaning to the Negro. It was very doubtful that if he was denied the right to vote in the first place that he could get a fair hearing on appeal. Moreover, this provision was more likely a loophole to insure that whites would be able to register to vote.

These were the qualifications of the franchise that the Committee on Franchise reported favorably on. These several suffrage requirements combined were deemed sufficient for the end in view. Isiah Montgomery, the only Negro member of the Convention, and a member of the Committee on Franchise, addressed the Delegates stating what he believed to be the work to be done. He gave statistics as to

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[191] McNeilly, *op. cit.*, p. 137.

[192] Mississippi Constitution of 1890, article 12, section 248.

what he believed the effects of the Committee Reports would be if it was adopted. The *Clarion-Ledger* gave the following report:

"Before becoming a member of this Convention, he fully stated to his constituents his view of the work to be done—that we must restrict the franchise by prescribing such qualifications for voters as would reduce the negro vote considerably below the white vote of the State—such restrictions of course, to farily applied, and only effecting the colored vote to a greater extent because of their inferior development in civilization. He thinks now, as he did before the Convention, that Congress will interpose no objections provided such restrictions are honestly imposed for the bringing about a fair solution of the great problem.

"The speaker gave the following as the most reliable data he could obtain of present population in the State:

White	594,453
Black	949,724
Total	1,543,887
Black voters	189,884
White voters	118,890
Negro Majority	70,994

"This vote, he said, though nominally classed as Republican and Democratic is practically divided on the race line. He claimed that the plan reported by the Committee will produce the following result:

Present white voters	118,890
Plan will restrict	11,899
and leaves net white vote	107,001
Present voters, Negro	189,884
Plan will restrict	123,334
and leaves net negro vote	66,550
Leaving a white majority of	40,451." [193]

The calculated effect of the franchise provisions of the Constitution, if honestly applied was enough to guarantee white supremacy in politics. Yet, from his service in the Convention and in the Committee on Franchise, and from the daily declarations of such men as Judge Calhoon, Montgomery was bound to have known that all calculations based on an honest application of the franchise provisions were meaningless. He knew that it was the intention of the Democratic majority to eliminate Negroes with or without education and to remove no white voter from the rolls.[194] Even though the plans adopted were intended to and calculated to reduce the Negro majorities to a negligible quantity, there was some discontent and feeling that further and ultimate guarantees should be obtained to insure white supremacy in Mississippi.

The ultimate guarantee of white supremacy would mean the repeal of the Fifteenth Amendment. To this end, on Sept. 30, 1890, the following report was made to the President of the Constitutional Convention:

> "Your special Committee to whom was referred the accompanying preamble and resolutions with reference

[193] *Daily Clarion-Ledger*, Sept. 16, 1890, p. 1, col. 3.

[194] Wharton, *op. cit.*, p. 212.

to negro suffrage and the Fifteenth Amendment of the Constitution of the United States, would beg leave to report that we have considered the same and recommend the adoption thereof as presented.

Whereas, there are in the State of Mississippi, and some of the States of the United States in approximately equal numbers, two distinct races or types of mankind, the white and the negro; and

Whereas, these two races, though friendly and homogeneous for all business and industrial purposes, are widely separated by race instincts and prejudices in all political and social matters; and

Whereas, we are without any well founded hope of a change, in respect to the political relations of the two races, but in our opinion, they will ever be divided in all political contests in the main, on race lines, rather than on economic and other questions of common interest to them; and

Whereas, with such a condition, the one race or the other must have charge and control of the governments of such states, and to do so there will be ever recurring conflicts of greater or less magnitude between them; and

Whereas, a government thus maintained, existing and resting upon such a condition must of necessity be without permanence, efficiency or stability; and

Whereas, such condition of insecurity is not only a great political or social evil, but also greatly impedes all industrial development; and inasmuch as the *white people only are capable of conducting and maintaining the governments* in such States, giving security and protection to the whole people and prosperity thereof,

the negro race, even if its people were educated, being wholly unequal to such great responsibility, if they should come into control of such governments, therefore be it:

Resolved, by the People of the State of Mississippi, in this its Constitutional Convention assembled, that it is our deliberate judgment and opinion that the true and only efficient remedy for the great and important difficulties arising out of the conditions set forth in the foregoing preamble, lies in the repeal of the XV Amendment of the Constitution of the United States, whereby such restrictions and limitations may be put upon negro suffrage, by the several States, as may be necessary and proper for the maintenance of good and stable governments therein;

Resolved, that we request that the Congress of the United States cause to be submitted to the several States, a proposition to repeal said XV Amendment of the Constitution, and that we will cheerfully accept as a condition to such repeal such restriction in representation in the House of Representatives of Congress from Mississippi as may be reasonable and just in view of the diminution of the number of voters in the State subsequent upon such repeal of said XV Amendment." [195]

This was the attitude of the Constitutional Convention of Mississippi and of its members. However, if they could not have *de jure* repeal, with the adoption of the new suffrage provisions, the Convention would achieve a virtual *de facto* repeal of the Fifteenth Amendment.

Negro disfranchisement would help to guarantee white political supremacy in Mississippi. In addition the Consti-

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[195] Journal of the Constitutional Convention, *op. cit.*, pp. 303-04.

tutional Convention of 1890 established safeguards of white political control in the State government, even if all the Negroes could register and vote. The institutions established by constitutional provisions were made flexible enough to make ineffectual any possible number of Negro votes in the future. The system of legislative apportionment and the electoral college system for electing the Governor which were adopted made certain that the Negro could control neither the Legislative or the Executive Branch of the State government. The first step in creating the final solution to the Negro problem was a legislative apportionment creating a majority of white constituencies, the legal basis and bulwark of the design of white supremacy in a State with an overwhelming and a growing Negro majority.[196] The county apportionment of representatives in the legislature was so fixed in the Constitution of 1890 that a clear majority lies with those counties having a preponderance of white population. The counties of the State were divided into three divisions or groups. The white counties comprised two of the divisions and the black counties the third. The Constitution restricted reapportionment to permit changes within divisions (i.e. between counties which were white comprising a division or between black counties comprising another division) but not between divisions (i.e. between black counties in one division and white counties in another). In this way control of the Legislature was fixed permanently with the white counties.

An electoral college system was established for choosing the Governor. Electoral votes were distributed on the basis of county representation in the State House of Representatives. The white counties were guaranteed a majority of electoral votes because of the legislative apportionment. To win the election, a candidate for Governor had to re-

[196] McNeilly, *op. cit.*, p. 133.

ceive a majority of both the popular and the electoral vote. If he did not receive a majority of both, an election would be held in the House of Representatives between the two candidates receiving the highest number of popular votes. The candidate receiving the higher number of votes in the House was elected Governor. Since the white counties held a majority of the popular vote and a majority of the electoral votes, they would always be able to control the gubernatorial election. White control thereby rested in the State offices.

The long range problem of the possibility of Negro political power was met by adopting the device of the electoral vote and by an apportionment plan which would assure control of the lower House of the State Legislature to counties having a preponderance of white population. An analysis of these constitutional provisions shows that the counties with a preponderant white population have a clear majority of representatives and electoral votes for the State as a whole, and therefore, have complete control of the law-making and law-enforcing branches of the State Government. This plan assured and safeguarded white supremacy in 1890.

At the Conclusion of the Constitutional Convention, Judge S. S. Calhoon made an address.

> "Our mission here has been accomplished as best it could be upon the adjustment of the various opinions and interests of the various sections of Mississippi. Restrained by the Federal Constitution, we have tried to secure a more enlightened election franchise without race discrimination or injustice. We knew when we assembled that the Nation will yet learn that it is hardly possible for any two of the distinct type of mankind to co-exist with divided political sovereignty. Political partnership has naturally prevented an impartial view of the situation. This we cannot avoid.

We say to our brethren of the North, East, and West, that we are . . . willing to do all things except yield up the common civilization of our common country, which civilization was constructed, has been maintained, and can be continued only by the white race. . . .

Withdrawn from the development of white civilization the negro race seems unable to retain even its own initiative requirements. It seems unfit to rule. . . .

Yet confronted with this sad trial, it is our duty under the Constitution of the United States to undertake the great task of carrying on intelligent Republican government in Mississippi with his full cooperation, and with his rights and franchise as guaranteed by the organic Federal compact not only unimpaired, but fully protected.

To this state of temperament within this body is to be attributed the practical success of the Convention, to which all of the Delegates, singly and collectively, have contributed.

In my judgment, the material and moral advancement of the people of both races here depend on the predominance in government of that virtue, and intelligence, which for the present at least, can come only from that race which in the past has shown a capacity for the successful administration of free institutions. That race alone can now safely exercise the function of ruling with moderation, and justice, and accomplish the great purpose for which governments are established." [197]

The Constitution of 1890 was adopted in Convention on November 1. Thus, the work of the Convention was happily

[197] Johnston, *op. cit.*, pp. 224-25.

ended, and the elective franchise was placed upon what was considered to be a safe basis.[198] The Convention had thus finally overcome every difficulty. After careful and patient investigation it had disregarded the Act of Congress of 1870 and circumvented the provisions of the Fourteenth and Fifteenth Amendments. Furthermore it had devised a Constitutional scheme which would prove effective in relieving the State for a long time from the threat of Negro suffrage, while at the same time safeguarding white supremacy by other means.

One can scarcely read the debates of the Convention and the press discussions without concluding that the intention of those in authority was to accomplish by indirect means what the Federal Constitution forbade doing directly. Judge Thompson in discussing this, said:

> "I have heard attributed to a distinguished United States Senator, who would have been glad to come to a different conclusion, that this Constitution demonstrated that Anglo-Saxon ingenuity could accomplish anything; that the provisions of it on the subject of suffrage was (*sic*) a practical repeal of the Fifteenth Amendment of the Constitution of the United States, and yet the result was effected in such a way that its legality could not be successfully denied." [199]

The Mississippi Constitutional Convention of 1890 contained some of the ablest statesmen in the United States, men who knew that white supremacy could be legally established only by indirection. Anything aimed directly at the Negro, as a race, would be self defeating, all courts being required to uphold the Constitution of the United States

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[198] *Id.*, p. 226.

[199] Thompson, *op. cit.*, p. 43.

and to nullify everything which came in conflict with it.[200] In short, as was later stated in *Ratliff* v. *Beale*, by the Mississippi Supreme Court, the Convention had evolved a Constitution which discriminated not against the Negro but against his characteristics and limitations. Be that as it may, the Mississippi Constitutional Convention had substituted a more orderly and apparently, a more legal method of disfranchising the Negro. This could now take the place of the old system of fraud, intimidation, and violence.[201] Illiterates, tax-delinquents, criminals and certain other classes, as classes, embracing nearly all the Negroes and comparatively few whites, were disfranchised. As stated in 1892 by the constitutional scholar, Andrew McLaughlin, "There is no longer a doubt that the Fifteenth Amendment is disregarded in practice where it is not nullified on the face of the State law."[202]

During the Convention there was some question as to just how effective the franchise provisions recommended by the Committee on Franchise would be in reducing the Negro vote. A member of that Convention commented:

> "Then sir, after sifting and dissecting this report I do not find in it that settlement of the suffrage problem that will furnish certain fixed, stable and permanent white supremacy in this state; its plans rest too much on contingency and accident, and therefore, in my judgment, can endure but for a few short fleeting years when we will again be subject to the same unrest, disquietude, danger and peril that now environ us."[203]

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[200] Neal, E. F., "Mississippi's Primary Election Law", *Publications of the Miss. Historical Society*, VIII (1904), p. 24.

[201] Mabry, *op. cit.*, p. 333.

[202] McLaughlin, *op. cit.*, p. 828.

[203] *Daily Clarion-Ledger*, Sept. 16, 1890, p. 4, col. 4.

That analyst did not know how wrong he actually would be. Though the educational test was not applied until 1892, almost immediate results from the adoption of the new Constitution were evident. White Mississippi had spoken in no uncertain terms. Delegates on the floor of the Convention had openly proclaimed their intention of disfranchising Negroes. The moral effect of this was enormous. Three days after the Constitution was approved by the Convention, the regular State election was held. There were no reported disturbances or charges of intimidation or fraud. Yet only about thirty percent of the normal Negro vote was cast.[204] Rebuffed by unfriendly registrars, frowned on by the mass of the white population, and absolutely forbidden to support any candidates save of a party based on white supremacy, the Negro voters found it, in the words of one of their leaders, "A mighty discouraging proposition."[205] More and more of them, as time went on, simply abandoned the effort. As to the moral effects, it is to be noted that the fact of disfranchisement was accepted by the masses of the "sons of Ham" without show of sorrow or sign of resentment. Suffrage had come to them unsolicited; it departed from them unregretted. Having had their rights suppressed for so long and having been continually crushed, the Negroes could not rise in protest.

The demoralization of the Negro, however, was not the only harmful effect or evil consequence of the Constitution of 1890. There was also the inevitable relaxation in political interest, incident to the relief afforded through Negro disfranchisement. Another secondary evil consequence was that with the Negro no longer voting, the value of the constitutional provisions became obscured to the public. Measures, irksome in themselves, lose the sanction of law as the

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[204] Mabry, *op. cit.*, p. 332.

[205] Wharton, *op. cit.*, p. 216.

vital necessities of their adoption diminish and disappear. Then there comes the demoralization of a commonly violated, dead letter law.[206]

In theory, the laws would apply equally to both races. But in practice, they would not because the legislation was designed to attack the "peculiar racial characteristics" and limitations of the Negroes. When the new registration rolls were published in 1892, of the 76,742 voters, only 8,615 were Negroes.[207] By 1896 the white registration had increased to 109,337, while the number of Negro voters had reached only 16,234.[207a] The provisions on the franchise had proved to be even more effective than had been earlier calculated. From 1890 the legal Negro votes, and consequently the Republican party, have been a negligible factor in statewide elections. But for a dozen years after 1890, the Negro continued to be of considerable influence in black county elections. However, if the Negro ceased to be a direct influence in politics after 1890, indirectly his influence has been incalculable. His mere presence has been an intangible but tremendous influence on the behavior of Mississippi's white electorate.[208]

The reduced electorate in Mississippi after the Constitution of 1890 was adopted seems to have been caused more by the poll tax than by the educational qualification. Mayre Dabney, twenty years after the Constitutional Convention, addressed a reunion of its Delegates. He spent some time talking about the suffrage provisions which had been drafted. He declared that the "understanding" clause

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[206] McNeilly, *op. cit.*, pp. 137-38.

[207] Kirwin, *op. cit.*, p. 72. (Quoting Appleton's Cyclopedia, 1892, p. 472.)

[207a] *Report of the Secretary of State to the Legislature of the State of Mississippi*, 1896, p. 167.

[208] Kirwin, *op. cit.*, p. 72.

had not disfranchised as many Negroes as the poll tax, and he referred to his study of the tax records.[209] Dabney found that a very small percentage of the Negroes had paid their taxes. It was estimated that the ratio of whites to Negroes on the delinquent rolls in some counties was about one to eighteen.[210] Dabney concluded that the educational requirement was "of but little effect or value, and constituted but a small factor, if any at all, in precluding the Negro from voting."[211] The avowed intent of the "understanding clause" was to permit illiterate whites to qualify despite their illiteracy. The circuit clerks he had interviewed said that they rarely refused to register a qualified elector because of the understanding clause. It was their belief that the poll tax was the main factor disfranchising Negroes. Thousands of delinquents proved that point.[212] The poll tax disfranchised nearly all of the Negroes in Mississippi. It is evident, however, that in general voting in Mississippi was greatly reduced in the decades following 1890 and that the agency which was most effectual in accomplishing this end was the poll tax. The number of votes cast in the Gubernatorial election decreased from 64,339 in 1895 to 48,320 in 1899 to 32,191 in 1903.[213] The provisions of the 1890 Constitution indeed had had their effect.

The poll tax and educational clauses of the franchise provisions of the Constitution were basic limitations on electors. In Mississippi in 1902, some 30,000 white people had not registered. Of 198,000 Negroes in the State, 92,000

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[209] Williams, *op. cit.*, p. 242.

[210] Kirwin, *op. cit.*, p. 74.

[211] *Ibid.* (Quoting Dabney, p. 14.)

[212] Williams, *op. cit.*, p. 242.

[213] *Id.*, p. 246.

were literate, but less than 20,000 were registered to vote.[214] Even with the elimination of the Negro vote, corruption and fraud in the State government had not been ended. And too, some felt that even though few Negroes were registered voters, more would be able to qualify in the future. It was written in 1902 that:

> "It was the opinion of the leading men of the State at that time, (1890), as it is the consensus of opinion in the State at the present time, that the number of negroes who are being qualified under the educational conditions of the suffrage by the school facilities afforded by the State will continue to increase, and that it may be only a question of time when there will again be a majority of qualified negro voters in the State, and when it will become necessary to place further limitation on the elective franchise in order to secure the proper administration of the public affairs of the State." [215]

Something was wrong in Mississippi; a change was needed.

IV.

Selection of candidates for office were made by a party convention. The delegates to these conventions were apportioned on the same basis as legislative representation. This meant that the planters, who controlled the Legislature, would also control the nominating convention. This system was apparently not working well. The Government of Mississippi was in worse shape in 1898 than it had been during the period of radicalism.[216] *The Nation* wondered

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[214] Cory, C., "Suffrage in the South: Six New State Constitutions", *Review of Reviews*, XXV (1902), pp. 717-18.

[215] Johnston, *op. cit.*, p. 241.

[216] Kirwin, *op. cit.*, p. 77.

about the high taxes, the lack of public improvements, the extra legislative sessions, and the necessity of investigating official drunkenness: "This is certainly a pretty bad showing," the article concluded, "for that 'Caucasian rule' from which so much was promised."[217] This was also a period when the dirt farmer asserted himself in State politics in a revolution which began with the Constitution of 1890. The dirt farmer had been agitating for a primary election law in Mississippi. Such a law would take some of the political power away from the planter. Complete control of the nomination of candidates by the planters, which existed in these conventions, would be broken.

The Constitution of 1890 had provided in Section 247 that "(T)he Legislature shall enact laws to secure fairness in party primary elections, conventions, or other methods of naming party candidates."[218] The Legislature could pass a primary law if enough support could be gained for it. Finally a primary election law was approved on March 4, 1902. This was the greatest triumph of the dirt farmers. The law provided that party nominations in Mississippi should thereafter be made by primary election on a date to be fixed by the State Executive Committee of the party, but not later than August 10. The law was applicable to nominations of all county and State officers.

The primary election law gave the power to exclude persons or groups of persons by regulations to the State Executive Committee of the party holding such primary.[219] The Democratic State Executive Committee met in Jackson on June 22, 1903, and adopted a resolution providing "that every white Democrat who will be entitled to vote at the general election in November, 1903, be permitted to vote at

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[217] *The Nation*, LXVI (1895), p. 398.

[218] Mississippi Constitution of 1890, section 247.

[219] *Miss. Code* of 1906, Chapter 111, Section 3717.

the primary election to be held by the order of this Committee." [220] This regulation legally excluded all Negroes from the Democratic primary, and the rule was not changed by succeeding executive committees. Since nomination by the Democratic Party in Mississippi was equivalent to election in all state-wide contests and most local elections, debarment from the primary was in effect disfranchisement.[221] Thus an additional hurdle was placed between the Negro and the franchise. For even if he could overcome the Constitutional restrictions and unconstitutional intimidations to thereby secure the right to vote at the general election, the "real" election had already been decided in the Democratic primary, three months before. This regulation was to prevent the Negro from voting in any meaningful election in Mississippi until 1944.

Even with the effective exclusion of the Negro from the ballot, many Mississippians were willing to go even further in making sure that the Negro would not qualify to exercise the franchise. James K. Vardaman, a Governor of the State, urged exclusion of the Negroes from the schools in order to make sure that they did not qualify for the polls. This, too, was what many saw as the only salvation for an impoverished school system.[222] He urged other measures as well;

> "The negro should never have been trusted with the ballot. He is different from the white man. He is congenitally unqualified to exercise the most responsible duty of citizenship. He is physically, mentally, morally, racially, and eternally the white man's inferior. There is nothing in his individual character, nothing in his achievements of the past nor his promise for the

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[220] *Clarion-Ledger*, June 23, 1903.

[221] Kirwin, *op. cit.*, p. 131.

[222] *Id.*, p. 310.

future which entitles him to stand side by side with the white man at the ballot box. . . .

"We must repeal the Fifteenth and modify the Fourteenth Amendment . . . Then we shall be able in all over legislation to recognize the negro's racial peculiarities, and make laws to fit them. . . ." [223]

Neither the plan of excluding the Negroes from the public schools nor the plan to effect changes in the Constitution of the United States was ever adopted. However, on the issue of the Negro and the schools, the inequities between the races became patently obvious. The money spent *per capita* to educate the children and pay teachers' salaries is allocated in such a way as to guarantee that the education of the Negro child will never be the equivalent of what the white child receives. In effect the Negro was not denied the ballot because he was excluded from the public schools, but rather because the education he received and still receives is far inferior to that given whites. The Negro, whose presence in such large numbers in Mississippi has given a distinctive influence to its politics, has also given a distinctive influence to its racially separate school systems. The Negro was to become the neglected man in Mississippi, although not the forgotten man.[224]

Again in 1912, the white people of Mississippi were warned that they must stand united against the threat of Negro political power. A pamphlet, *Shall We Test the Validity of the Fifteenth Amendment?* appeared, which stated:

"The negro is now permitted to vote in those States only where his political influence is not supposed to be too dangerous. . . .

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[223] *Clarion-Ledger*, April 27, 1907, p. 4, col. 2. (Quoting the Vardaman "idea" from the *Saturday Evening Post*.)

[224] Kirwin, *op. cit.*, p. 134.

In 1911, during his campaign for re-election to the United States Senate from the State of Mississippi, the senior Senator assured the people that the present arrangement excluding the negroes from the polls was satisfactory to them.

"(Negroes) No, they are not satisfied, and they are always hoping to recover the exercise of their right to vote. . . . Take for example the situation in Mississippi. The franchise clauses of the new Constitution of that State were unquestionably the earliest and most efficient contrivance devised to keep the negro from exercising the right to vote. But they are a temporary expedient at the longest. So said the author or authors whose ingenuity and statesmanship originated the device at the very time it was resorted to.

And now after the lapse of little more than twenty years it could easily be made inoperative and futile; for there are more than enough literate negroes in Mississippi today who could become qualified voters under the Constitution to hold the balance of power between the whites, if we should divide on political issues." [225]

It is only fair to assume that the author's statement is true that many Negroes could meet the qualifications required to become voters but that they were not voters at the time. This simply meant that if the whites remained united, the Negroes would not be allowed to vote even though they were qualified to meet the Constitutional requirements for the suffrage. And indeed, this was the situation which did exist.

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[225] Leavell, W. H., *Shall We Test the Validity of the Fifteenth Amendment?* Memphis, E. H. Clarke & Brother, 1917, pp. 4, 7, and 8.

The Nineteenth Amendment to the Constitution of the United States was declared ratified on August 26, 1920.

> "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.
>
> Congress shall have the power to enforce this article by appropriate legislation."

This article extended the right to vote to women. The State of Mississippi had rejected it, but State laws were passed in 1921 to comply with the Federal Constitution and to permit women to vote. However, it was not until 1935 that Mississippi finally amended its Constitution to include women as being eligible to vote. This was done by changing the phrase, "every male inhabitant" in Section 241 to "every inhabitant."

At the same time, a provision of the same section was changed so that one had to have paid *all poll taxes* which may have been legally required of him, rather than to have paid *all taxes* which may have been legally required of him, as had been provided for in the 1890 Constitution.[227] The amendments to Section 241 of the State Constitution were adopted in an Extraordinary Session of the Legislature. The requirements which had to be met in order to be eligible to vote had been made easier. The electorate had been expanded, but the effect of this change on the Negro was only slight because he still could not vote in the Democratic primary election.

The State legislature acted in 1936 to make even more stringent the primary election laws of the State. Chapter 320 of the Laws of 1936 affected the poll tax requirements which had to be met to qualify to vote in a primary. The

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[226] Nineteenth Amendment to the Constitution of the United States.

[227] Mississippi Constitution of 1890, section 241, amended by Chapter 117, Laws of Mississippi, Extraordinary Session, 1935.

change adopted required that to vote in a primary, one had to have paid his or her poll tax annually on or before the first day of February of the year in which such poll tax was due for the two years prior to the time such person offers to vote, and such person must have in his or her possession at the time he or she offers to vote, poll tax receipts for the two preceding years. This change was significant in the sense that for the first time it required that one had to have paid his poll tax on time, before the first of February, annually for two years before he could vote in a primary election. The new requirement was stricter than that for the general election. At that time, the effect of this law on the Negro was still negligible because the Negro was barred by regulation from voting in the Democratic primary. However, today, it is another stumbling block in the path of the Negro who desires to exercise the most important right of citizenship.

When the United States Supreme Court in *Smith* v. *Allwright*, 321 U. S. 649 (1944), held unconstitutional the exclusion of Negroes from the Democratic primary in Texas, there was a great cry for the adoption of new measures to circumvent the decision in Mississippi. One of the chief legal safeguards of white supremacy in the State could no longer be used. The Negro could no longer specifically be barred as a class from voting in the most important election held in the State. The reaction of the State Legislature to the court's decision was to pass new laws to accomplish in effect what the old law had done. These laws did not specifically exclude Negroes, but did establish rules and permitted the establishment of regulations by the party state executive committee with which compliance was required as a condition of being eligible to vote in the party primary and with which the Negroes as a class could not comply.

The first new legislation designed to circumvent the Supreme Court ruling in the *Smith* case was passed in 1947.

In that year, Negro voting registration was slightly over one percent of all adult Negroes.[228] The extraordinary session of the Legislature in 1947 passed House Bill #36 which authorized the party state executive committee to make regulations for primary elections and to hold a new registration.[229] This bill gave the committee the power to make regulations which could discriminate against the Negro. By holding a new registration of party members, they were able to purge the old lists while requiring the registrants to meet the new regulations. The Legislature also passed House Bill #38 which was adopted on the same day. This bill said that to be eligible to vote in a primary a person must intend to support the nominations made in the primary and must be in accord with the principles of the party. The law further provided that any member of the party holding such primary, or any primary election officer, may challenge any person offering to vote, and cause him to answer under oath and in writing, if demanded by the challenger. Questions could be asked of the voter relating to his qualifications and as to whether or not he was in accord with the principles of the party, as stated in the State Convention of the party.[230] This Act would restrict Negro participation in the primary because the party could make principles so repulsive to the Negro that he could not possibly join. Furthermore it permitted intimidation of the Negro by both members of the party and primary officials. These laws were simply safeguards to assure that few Negroes, if any, would be able to vote in the Democratic primary.

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[228] Bettersworth, J. K. and Evans, W. J., *You and Your Vote, Citizen's Handbook*, #1, State College, Mississippi, The Social Science Research Center, May 1954, p. 18.

[229] Sessions Laws of Mississippi State Legislature, Extraordinary Session, 1947, House Bulletin, #36.

[230] *Id.*, House Bulletin, #38.

The Mississippi Legislature of 1948 passed a law which additionally restricted the ability of Negroes to vote in the Democratic primary. House Bill #439, adopted during the regular session of that year added to H. B. #38 of 1947 that no person shall be eligible to participate in any primary election unless he has been "in accord with the party holding such primary within the two preceding years" and "unless he is not excluded from such primary by any regulation of the State Executive Committee of the party holding such primary." [231] This law could have several effects which would be adverse to the Negro. The two year requirement could have the effect of a "grandfather" clause in the sense that it would have been very difficult for the Negro to have been in accord with the party for the two preceding years, thereby making him ineligible to vote in the primary. The clause on party regulations was also a device which might indirectly be used to exclude the Negro from the Democratic primary.

These laws permitted Mississippi to get around the 1944 Supreme Court ruling that it was unconstitutional to exclude Negroes from the Democratic primary. By indirection in attacking the Negro, the legislature could circumvent the ruling in almost the same way that the Constitutional Convention of 1890 was able to disfranchise Negroes without violating the Fourteenth and Fifteenth Amendments. Mississippi was determined to keep its important election, the Democratic primary, as uncolored and lily white as possible.

In 1948 there was also an attempt to amend the State Constitution by adding a provision that in addition to all the other qualifications required of a person to be entitled to register, such person shall be of good moral character.

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[231] Sessions Laws of Mississippi State Legislature in Regular Session, 1948, House Bulletin, #430.

This would give the registrar increased discretionary power in refusing to register an applicant. The term "good moral character" is so vague that it permits a wide variance of interpretation. This would have been an additional basis for refusing to register Negroes who had made the attempt to exercise their right to vote. The politicians believed that additional safeguards were needed in Mississippi to protect white political supremacy. The people, however, did not; and the Amendment to the Constitution was rejected. Good moral character was not yet to become another indirect manner of discriminating against the Negroes in the State.

Meanwhile, the State Legislature could continue to provide methods for discriminating against the Negro's effective exercise of the franchise in the laws which it passed governing primary elections. By an Act of 1950, the person offering to vote in the primary of a party could be made to swear that he intended to vote for the nominee of the party in the November general election, and that he had supported the party for the past two years, and that he was in accord with the principles of the party as declared by the State convention.[232] Again, there could be intimidation by challenge.

In 1952, the Mississippi Legislature passed a Constitutional Amendment, and submitted it to the people for ratification. This Amendment was designed to have a far-reaching effect on the future electorate of the State. It would stiffen the literacy test required of registrants and provide that in addition to being able to read any section of the State Constitution, the applicant would also have to write it and give a reasonable interpretation thereof. Also, the applicant would have to demonstrate to the registrar a

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[232] Bettersworth and Evans, *op. cit.*, p. 22.

reasonable understanding of the duties and obligations of citizenship. This amendment would give to the registrar complete discretionary power in deciding whether or not a person would qualify. The Amendment would in fact discriminate against Negroes, not only because of the power of the registrars, but also because the Negroes were given such an inferior education in the State. One has only to examine the statistics relating to State education. The newspaper comment on the amendment was extensive. Charles Hills in the *Clarion-Ledger* said, "Certainly, any person who could be classed even close to illiteracy would be hard put to pass an examination to vote under that Bill." [233] The *Delta Democrat-Times* in its lead editorial stated:

> "The new law presents two good points but contains a hidden gimmick that makes the proposition unpalatable to any fair-minded citizen.
>
> . . . And who is to be the judge of the "reasonableness" of all these new requirements, interpretations, and essays in citizenship? The county registrar. He has been and is the logical man, of course . . . , but this law puts an unusual burden on the decision of one man.
>
> We would not argue with the written application. That is a needed change. It would mean that the prospective voter has a record in the court house to show he has applied. If he is subsequently dealt with unfairly, there is some proof on hand to show when he made his first move to obtain voting rights. Again, the application is palpable proof that the person can read and write, and certainly literacy should be a requirement for any voter.

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[233] *Clarion-Ledger*, October 19, 1952, p. 4.

It is well too, that every citizen be able to understand our State Constitution and to know the duties and responsibilities of citizenship.

But every time we go to court we hear attorneys arguing on their varied interpretations of our laws. If even the attorneys find vagueness in our Constitution, about which there can be a clear difference of opinion, how is an ordinary if literate, layman to be expected to interpret them? And if he is articulate enough to explain the duties of a citizen, from his point of view, and to give his interpretation of our laws, how is he expected to satisfy or anticipate the opinion of the county registrar of voters?

What this amendment would in fact do is this: It would leave to the discretion of the county registrar, the full choice of who may vote and who may not. All he has to say is "Sorry, that's not reasonable to me," to disqualify anybody, black or white, from voting.

The law is obviously aimed at excluding segments of our population from voting.

It is not designed as a test of citizenship, because some of its requirements are not specific enough to be proved.

For all practical purposes, the law has never been enforced except against Negroes in the past. Do you know of any white person who has been asked to 'read or interpret' the Constitution as has been required all these years?

The new amendment is fashioned to make it even more difficult for qualified citizens to vote. Furthermore, it puts even greater powers in the hands of a county registrar. Do not believe that an unscrupulous registrar would not exercise his prerogative to prevent any-

one he desired disfranchised from voting. It could be your son or mine." [234]

The papers saw the amendment for what it was, another safeguard to protect white supremacy in Mississippi. The *Delta Democrat-Times* in another editorial emphasized what the Amendment was designed to do.

> "Why, if the lawmakers were sincere in wishing the voter qualifications of Mississippi voters raised, does it not apply to everyone? By the new law it would be years before many voters would be required to be literate.
>
> The truth is, as we suggested before, the new law is not designed to produce a more enlightened electorate so much as it is to exclude certain people and groups of people from voting. It was not until Negroes began voting in considerable numbers throughout the State that there was any pressure for a change in the voting qualifications from the Legislature. The sad aspect of this, besides the preconceived and deliberate attempt at injustice, is that such a law need not affect Negroes alone. It could affect any person or group of people. It is an interesting twist that a law that is copied from that of enlightened States could be used for unenlightened purposes.
>
> What the law would do would be to create an elite group of electors, those who are 'acceptable'; this elite group would include all who can already vote, and could easily exclude all others.
>
> It is not necessary to do anything further in the way of discrediting Mississippi before the eyes of the world.

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[234] *Delta Democrat-Times*, October 16, 1952, p. 4.

It is time for us to go in the other direction, to keep up with a changing world, rather than to try to turn back the clock."[235]

The Jackson *Clarion-Ledger* reported on November 4:

"The State Constitution written in 1890 required voters to be able to read but said nothing about writing. The proposed amendment would change the document to include that requirement.

Ed White of Homes County, State Legislator urging the adoption of the amendment, said 'the educational level of Mississippians has changed in the last sixty years to outdate the requirements.' Opponents of the amendment argue the new proposal is aimed at racial discrimination and leaves too much power with the registrar of voters."[236]

But what was the opinion of the public on this issue? The *Delta Democrat-Times* interviewed various people. Judge E. Harty, commenting on the amendment, said, "Personally I think it is already hard enough to get people to vote without doing anything to make it more difficult as this proposed amendment will do. Besides it puts too much power in one man—the County Registrars." A woman said, "Now as to this amendment which is being proposed. It's apt to be discriminatory. There's the biggest danger and thing that I fear most about the proposal." Ray Campbell, an attorney, said, "The truth of the matter is if the county registrar acted reasonably it will be all right." Ray Hanf said, "I think it's much too strict. Any voter of an organ-

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[235] *Id.*, Oct. 28, 1952, p. 4.

[236] *Clarion-Ledger*, Nov. 4, 1952.

[237] *Delta Democrat-Times*, Oct. 26, 1952, p. 7.

ization that has a constitution, either government or business, should understand that constitution. But at the same time, they rarely ever do. One thing that worries me is the fact that this new amendment would cut down on the potential voters, and not enough people go to the polls as it is." Mrs. V. A. Denslow commented, "I'll tell you. I believe in having voter qualification. I think it's right and proper. But I do think any amendment should apply to all voters—old and new alike. Why should it apply only to new voters?"

Such were the views of members of the electorate. The vote was taken in November; the mandate of the people declared the defeat of the amendment. The *Delta Democrat-Times* declared:

> "Whether by design or by accident the voters refused to bind prospective new voters with what could be administered as impossible restrictions. Whatever the reasons behind the omission they served a good purpose.
>
> Mississippi does need higher qualifications for voters, and a literacy clause. But the State does not need another vague law that would place unprovable prerequisites for voting at the discretion of county registrars." [238]

The people of Mississippi had not then seen fit to add an amendment with a very dubious purpose to their Constitution.

Mississippi had 22,404 Negro voters in 1954.[239] The percentage of registered Negro voters had risen from slightly

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[238] *Id.*, Nov. 7, 1952, p. 4.

[239] *Clarion-Ledger*, Nov. 2, 1954, p. 4.

over one percent in 1947 to about four percent of all adult Negroes. The state legislature again acted to combat the increase to safeguard the white supremacist position. It passed an amendment to Section 244 of the Constitution which was substantially the same as the 1952 amendment that had been defeated by the people. The amendment stated:

> "Section 244: Every elector shall, in addition to the foregoing qualifications be able to read and write any section of the Constitution of this State and give a reasonable interpretation thereof to the county registrar. He shall demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government.
>
> The person applying to register shall make sworn, written application for registration on a form to be prescribed by the State Board of Election Commissioners, exhibiting therein the essential facts and qualifications necessary to show that he is entitled to register and vote, said application to be entirely written, dated and signed by the applicant in the presence of the county registrar, without assistance or suggestion from any person or memorandum whatever; provided, however, that if the applicant is unable to write his application by reason of physical disability, the same, upon his oath of such disability, shall be written at his unassisted dictation by the county registrar.
>
> Any new or additional qualifications herein imposed shall not be required of any person who was a duly registered and qualified elector of this State prior to Jan. 1, 1954.

"The Legislature shall have the power to enforce the provisions of this section by appropriate legislation." [240]

The Legislature passed an act to submit this amendment to the people of the State for ratification in the November election. The amendment was clearly tied to the question of maintaining segregation and white supremacy in Mississippi. In the fall, emotions were heated on the issue of whether or not the people should vote to make the amendment part of the State Constitution, the fire having been fanned by the Supreme Court in *Brown* v. *Board of Education of Topeka*, 349 U. S. 294, the school integration case.

The *Delta Democrat-Times* said on October 10:

"If Mississippians go to the polls in any numbers November 2 it will be to vote on a constitutional amendment to increase the requirements of voter registration. The Legal Education-Advisory Committee is expected to give some attention to publicizing the amendment as a long-range method of keeping segregation. The proposal was designed to slow down Negro registrations and a number of committee members have said they feel any long-range success in keeping whites and Negroes separated lies in keeping whites in control of the ballot boxes." [241]

The *Jackson Clarion-Ledger* stated on October 18:

"... The qualifications to vote are the same as they were sixty-four years ago with the result that our qualifications are now among the lowest in the country.

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[240] Mississippi Constitution of 1890, Section 244, Laws 1954, ch. 427, 1955, ch. 133.

[241] *Delta Democrat-Times*, Oct. 10, 1954, p. 1.

> To advance the cause of good government in Mississippi, the Legislature at its regular 1954 session passed Senate Concurrent Resolution #13 to be voted on by the people at the general election . . . ."[212]

The dispute in the newspapers was over the issue of the amendment as a segregation measure. But it was not until immediately before the election that they levelled their barrages. In the meantime, various organizations in the State took sides either supporting or opposing the amendment. The labor organizations of the State condemned the proposed amendment as it related to changing the voter qualifications. The Mississippi Federation of Labor (A. F. L.) attacked the amendment:

> "Whereas, the Mississippi Constitution . . . has throughout the years specified the requirements relative to qualification of citizens to register and vote, and
>
> Whereas throughout the years wisdom has dictated that such constitutional provisions not be tampered with, and
>
> Whereas, the citizens of Mississippi on November 4, 1952, by substantial vote refused to . . . tamper with said constitutional requirements.
>
> Whereas, restriction of the right to vote because of lack of educational knowledge is not compatible with our American way of life, and
>
> Whereas, restraint on the ballot is a device of dictators, bent on the establishment of totalitarian states . . .
>
> Whereas, personal prejudice, or malice or pressure exerted on . . . circuit clerks by pressure groups could become a factor in preventing the registration of

[212] *Clarion-Ledger*, Oct. 18, 1954, p. 6.

numerous persons thereby limiting to the pleasure of the circuit clerk or of the pressure group exclusive control of all registered voters within their respective counties.

Therefore, be it resolved that the Mississippi State Federation of Labor go on record as opposing this proposed Constitutional amendment," [243]

The Jackson Daily News reported on November 1:

"The amendment would raise voting requirements and its proponents admit it is designed to check the increasing number of Negro ballots.

Belated opposition arose during the weekend to the amendment, which has the support of state leaders, from the Mississippi State Industrial Union Council (CIO) which charged the 'real purpose' behind the proposal was 'obscured behind a smoke screen of racial prejudice.'

The labor group charged that certain groups in the state are trying to 'take away the privilege of voting from large segments of the present and future citizens' of the state. J. D. Hanna of the CIO (President) explained that there is no permanent registration of voters in Mississippi, a situation which could declare some voters unqualified even though they had registered before January 1, 1954. 'County boards of supervisors can call for a new registration at any time,' he said." [244]

The labor unions opposed the amendment because it removed the right of the ballot from the "uneducated" group

[243] *Delta Democrat-Times*, Oct. 7, 1954, pp. 1-2.

[244] *Daily News*, Nov. 1, 1954, p. 8.

of citizens. They believed that the law was vague enough and the administrative discretionary power given the registrar sweeping enough to enable the qualifications to be used arbitrarily against any group when politicians considered it expedient to remove such an organization from the franchise. The Unions were aware of the ease with which this law might be used against organized labor in Mississippi.

The major organizations supporting the amendment were Mississippi's Citizens Councils which were dedicated to preserving racial segregation. Robert Patterson, executive secretary of the Councils said, "We must use and unite our ballot that the squeak of certain insidious minority pressure groups will be drowned out by our mighty roar." [245] He urged the council members to vote in the election for the Constitutional amendment, which would "raise voter qualifications," admitting that its "sole purpose is to limit Negro registration." [246] Patterson said that the Citizens' Councils have been formed to give support to the Legislature in its fight to keep segregation.[247] He added that the amendment would have passed two years ago had the voters known what they were voting for. "If our Councils do no other good they will be worthwhile if they inform the people what they are voting for", Patterson said.[248] The Attorney-General of the State commented on the amendment and the Council activity in the *Clarion-Ledger* of October 31:

> "Under the present set-up if a circuit clerk refuses to register a person who can read, then he is liable for damages in court for depriving that person of his right.

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[245] *Id.*, Oct. 28, 1954, p. 11.

[246] *Delta Democrat-Times*, Oct. 29, 1954, p. 2.

[247] *Jackson Daily News*, Oct. 29, 1954, p. 2.

[248] *Delta Democrat-Times*, Oct. 29, 1954, p. 2.

A clerk in Oklahoma got sued and had to pay $5,000. This has scared some of our clerks in Mississippi, and, as a result in several counties, the Negroes have been voting in large numbers.

In other words the only defense we now have is now crumbling and we need additional requirements that the clerks can legally impose. The time is short. The Citizens' Councils in each community are in a position to perform a great service for our cause if they assure the passage of this amendment." [249]

During the campaign for adoption of the 1954 amendment, the newspapers candidly reported the intention of the proposal. The *Clarion-Ledger*, a backer of the Amendment, in an October 31, editorial said:

"Adoption of this amendment, and fair and uniform application of the new voter-registration requirements, over the years would steadily increase the average educational qualifications and intelligence of our citizens.

It would also curb the registration of members of groups most likely to engage in 'bloc voting'.

And we believe that adoption of this amendment would, over a long period help win the fight to retain our separate school system and social institutions." [250]

By November 2, the purpose of the Amendment was being made even more obvious. On the amendments it said, ". . . and the second would tighten up voting requirements and discourage if not prevent further qualification of

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[249] *Clarion-Ledger*, Oct. 2, 1954, p. 20.

[250] *Id.*, Oct. 31, 1954, Section 4, p. 2.

Negroes for voting." [251] On the same day Charles Hill commented:

> "So you may well see that the Negro vote cannot—at this time make a great deal of difference in a statewide election unless held completely together as a minority group and used in a very close election.
>
> However, there is a steady uptrend of registrations by Negroes for the ballot. The Constitutional Amendment, which appears on the ballot Tuesday is supposed to be a guard against that." [252]

The Jackson *Daily News*, another supporter of the Amendment, was equally honest in its coverage.

> "Tuesday voters go to the polls to cast their ballots on a constitutional amendment that would in effect restrict the Negro vote by requiring a 'written interpretation of any portion of the state constitution,' and
>
> The amendment would raise voting requirements and its proponents admit it is designed to check the number of Negro ballots." [253]

It was made quite clear to the citizens of Mississippi that the constitutional amendment on which they would vote was specifically intended to prevent the Negro from qualifying for the franchise.

The newspapers on both sides of the issue encourage voters to exercise their right to vote. The *Delta Democrat-Times* considered the Amendment to be "overly complicated" and was of the opinion that an effort was "being

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[251] *Id.*, Nov. 2, 1954, p. 1.

[252] *Id.*, Nov. 2, 1954, p. 4.

[253] Jackson *Daily News*, Oct. 31, 1954, p. 11, and Nov. 1, 1954, p. 8.

made to control the electorate—to give a small and potentially powerful group of people prior power to decide who shall and who shall not vote. It is no step forward for Democracy. To the contrary."[254] The paper went on to urge:

"... the ballot is very important in another and vital respect. If the people do not vote, they may be allowing those who do vote to take away the right of future generations to vote.

Not to vote at all can mean that an amendment to the State Constitution will be passed which will put some mischief into voting qualifications.

The mischief may mean that if your son or daughter does not suit the county registrar when it comes his or her time to become a citizen, citizenship can be arbitrarily denied. And that's the way it will stay unless there is money to take the case through the Supreme Court.

The only reason this amendment failed to pass two years ago was that there was a general election of high interest at that time and not all the people who voted for the candidates bothered to vote for or against the amendment. Although the majority of people voting on the amendment voted for it, those who cast their ballots but did not vote on the issue were counted as votes against the amendment.

This time there is but one real issue to vote on—the voting qualification amendment. There is nothing else to distract from the issue. Those who go to the polls will be going principally to vote on this issue.

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[254] *Delta Democrat-Times*, Oct. 26, 1954, p. 4.

> Vote your convictions—but vote. If you fail to vote you will have no right to complain that Mississippi's laws are made which leave the door open for unjust treatment." [255]

The voters did turn out to vote on the issue of the Amendment.

The constitutional amendment was approved by the people. The *Clarion-Ledger* reported that "returns trickled in slowly both from the senatorial race and balloting on a pair of constitutional amendments, one designed to help retain segregation . . . The amendment is plainly aimed at Negro voters, and the provisions would not apply to those already qualified." [256] The paper commented:

> "Mississippi voters defeated a similar amendment just two years ago. Reasons for the shift in public opinion, resulting in approval of the amendment Tuesday, are too well known to need discussion. Chief among the recent events and developments inspiring this shift of public opinion was the United States Supreme Court's decision outlawing segregation in the public schools even where equal facilities existed.
>
> We believe that under existing conditions and prospects our people were wise to approve this amendment. It should be an effective weapon in the fight to retain segregation in and out of the schools." [257]

The *Delta Democrat-Times* concluded:

> "The work of the 'Citizens Councils' county organizations for maintaining segregation, was evident Tuesday in a vote on a Constitutional amendment to raise

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[255] *Id.*, Nov. 1, 1954, p. 4.

[256] *Clarion-Ledger*, Nov. 3, 1954, p. 1.

[257] *Id.*, Nov. 4, 1954, p. 20.

voter qualifications requirements. While the amendment, designed to check Negro registrations was approved in most counties the turnout was heaviest in counties with strong Councils." [258]

The Mississippi State Legislature inserted the amendment into the Constitution on January 26, 1955. In March the Legislature acted to implement the provisions of the amendment. There was an attempt made to disfranchise all those voters who had registered since January, 1954, but Attorney-General Coleman ruled that only registration since January 26, 1955 must be stricken since that was the date of the amendment's insertion into the Constitution. However, the implementing legislation ruled that the first date, January 1, 1954 was to be the date from which registration was stricken. Chapter 104 of the laws passed in the Extraordinary Session of 1955 required a written application for registration. The form which was adopted provoked a story which appeared in the *Delta Democrat-Times*. The story entitled, "Even a Lawyer Could Fail State's New Voter Test" stated:

> "An estimated 30,000 Mississippians have had their voter registrations nullified and the blunt truth is that county registrars will decide which ones will be allowed to re-register successfully.
>
> A written, three page exam which a Constitutional lawyer could flunk, if the circuit clerk wanted him to—awaits registrants from here on out . . .
>
> Some sections of the Constitution are clear in their meaning, but if the registrar wanted a particular person to fail the test he could point to any number of sections.

[258] *Delta Democrat-Times*, Nov. 7, 1954.

> As a clincher, the applicant is given space after Question 20 to write a 'statement setting forth your understanding of the duties and obligations of citizenship under a constitutional form of government.'
>
> There was a frank understanding among legislators that the test probably would not be used for white people, but that almost anyone could be made to flunk. And that's the way they want it." [259]

That newspaper, however, was not the only source of discontent after the appearance of the new registration forms. The *Clarion-Ledger* reported:

> "Mississippi circuit clerks will ask the Legislature Wednesday to repeal a bill which requires a written test for voter registration. In a meeting here Tuesday, the group said the bill 'creates an impossible situation —it is unfair to the clerks.' The clerks voted unanimously for the repeal of the bill." [260]

The Circuit Clerks wanted a bill which would require no written test or application. Their main objections to the present bill were:

1. The physical impossibility of registering voters while maintaining the existing office force.
2. In a few weeks the new application for registration will be public information. The clerks believed that Negroes can then 'memorize' answers.
3. The new application is too involved. People won't vote if they have to go to so much trouble.
4. It puts too much power in the hands of one man (the clerk).

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[259] *Id.*, March 27, 1955, p. 1.

[260] *Clarion-Ledger*, March 30, 1955, p. 3.

5. In civil rights suits, it would 'pinpoint' the circuit clerk. The whole burden of responsibility rests on the clerk.

6. The bill makes no provision for registration by absentee ballot. Men away from home in the armed forces couldn't vote.[261]

There were Legislators who lamented what they had done. One said, "This is too complicated. If I wasn't already registered, I don't believe I could qualify to vote myself." [262] Another said, "The people are now against the Constitutional amendment. They are sorry they voted for it and never would have if they understood it. The people were told that the amendment would solve the segregation problem. They were misled." In any case, the bill stood. It did discriminate against the Negro, and it was applied in a discriminatory fashion. But some of the white citizens of the State were disillusioned so that they felt that they would have to make a further effort to keep the Negro from getting the exercise of the ballot.

In 1958 the Mississippi Legislature acted to enable whites of the State to maintain their political supremacy even more easily. The process for amending the State Constitution was eased so that sweeping constitutional reforms could be made by amendment rather than by convention. This change would enable the State to meet more quickly any challenge or threat to its separate institutions.

The franchise article of the Mississippi Constitution was again amended in 1960. Chapter 550 of the Mississippi laws of 1960 sent to the people for ratification in the November election the following amendment to Article 12 (Franchise), Section 241:

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[261] *Ibid.*

[262] *Id.*, p. 7.

"In addition to all other qualifications required of a person to be entitled to register for the purpose of becoming a qualified elector, such person shall be of good moral character.

The Legislature shall have the power to enforce the provision of this section by appropriate legislation."

Again the Legislature had proposed making a requirement for the franchise a qualification which was vague and indefinite on its face. It was one that could be easily susceptible to discriminatory administration. Obviously the amendment was intended to be another weapon to be used in keeping the Negro from the ballot.

The immediate reaction in the newspapers to the proposed amendment was that it was another segregation measure. On June 8, the *Clarion-Ledger* said of the amendment, along with several others which had been submitted, "Apparently both are aimed at maintaining segregation." [263] The *Delta Democrat-Times* reported:

"A proposed Mississippi voter registration requirement that a person must be of 'good moral character' has been labeled as 'clearly unconstitutional' by the Civil Rights Commission. (Rev. Cox)

The circuit clerk, who registers voters, would be the judge of character. Rev. M. Cox of Gulfport; Chairman of the State Advisory Committee to the Commission, said at the group's monthly meeting Wednesday that he had received a letter from the Civil Rights Commission, saying that the Legislature's adoption of a morality voter requirement 'has really raised some eyebrows among the Civil Rights Staff.'

[263] *Id.*, June 8, 1960, p. 8.

> Retired Admiral R. Briscoe of Liberty, a Committee Member, said the proposal doesn't 'define what the limits of morality are.' He said the requirement would give registrars 'an alibi' in excluding Negro voters." [264]

This was indeed the avowed intent of the proponents of the Amendment.

During the campaign for the adoption of this new amendment the newspapers candidly reported the intention of the proposal as they had done in the campaign of 1954. It was said in the *Delta Democrat-Times*:

> "The Mississippi Labor Council, AFL-CIO, charged today three proposed amendments to the Mississippi Constitution are 'vicious attacks on democracy'. The Council, in announcing the first public opposition to the amendments to be submitted to the voters November 8, said it is always against attempts 'by various groups or elements in their abortive efforts to undermine or subvert our democracy.' Its opposition was announced a few hours after Gov. Ross Barnett issued a statement calling for approval of the amendments to help 'protect our way of life.'
>
> A measure to require that voters have 'good moral character' as judged by circuit clerks is 'loaded with nitroglycerin for anyone in any walk of life,' the Council said. 'Few men have the same views on morals.'
>
> It said Mississippi presently 'has the most rigid voter qualification laws of any of the fifty states' and that 'the need is obviously for a liberalization of the laws—not further restrictions.'
>
> Governor Barnett took note of the absence of public opposition at the time of his statement late Monday.

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[264] *Delta Democrat-Times*, June 16, 1960, p. 1.

But he said he hopes voters will give 'such strong endorsement of these proposals that there will remain no doubt as to Mississippi's position on these vital matters.

'Generally, the amendments being submitted for ratification by the people were drawn to strengthen the state's position of segregation . . . and give more quality and importance to the ballot of the individual,' " said Barnett.[265]

John Emmerich of the McComb *Enterprise Journal* tried to express the peculiarity of the existing situation when he said:

"But today Mississippians have been maneuvered into the position of arguing against and bitterly fighting those who want to extend to all citizens of America, Negroes included, the civil right guaranteed by the Constitution. Take the matter of the right to vote. Anyone who believes in the American Constitution knows that document guarantees the right to vote to all qualified citizens regardless of race.

But today, Mississippians in reacting to the assaults on our traditions have to attempt to defend their position of denying the right to vote to many Negroes who, by every measure are qualified to vote.

"There are white Mississippians . . . who contend that Negroes haven't yet earned the right to vote. Yet the Constitution which we embrace does not say that a group of people, as a class, have to earn 'the right' before they can vote.

It specifically says that all individual citizens who are qualified—regardless of their race—are guaranteed the

[265] *Id.*, Oct. 25, 1960.

franchise. It is also interesting to observe that many of the white Mississippians who are loudest in their demands that the Negroes must earn the right to vote before they can do so also are the quickest to criticize any Negro who appears to rise above his station. The former attitude, of course, is inconsistent with the latter.

But when nerves are frayed and better judgment is unheeded in emotional situations, watch out for unwise decisions. Unfortunately Mississippi today, finds herself in a position much like that one." [266]

This is the moral dilemma in which the state embroiled itself: Right, justice, and principle were combating segregation, white supremacy, and tradition. Newspapers aligned for or against the "good moral character amendment". The *Delta Democrat-Times* almost stood alone against the vast majority of the papers in the State. On October 28, this paper came out most strongly against the amendment, for "its adoption would mean that one man would have the authority to give or deny the right to vote to anyone he chooses." [267]

Meanwhile the Citizens Council newspaper urged voters to "safeguard Mississippi from the black bloc vote" by approving on November 8, the proposed amendment which would require registrants to be of good moral character. The editorial said the proposed amendment, one of five which was to be voted on in the election, would help "protect Mississippi ballot boxes from the self-seeking forays of bloc voting pressure groups" and discourage mass registration efforts on the part of irresponsible and immoral elements. [268] The one side would admit what the proposed

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[266] *Id.*, p. 4.

[267] *Id.*, Oct. 28, 1960, p. 4.

[268] *Id.*, Oct. 31, 1960, p. 1.

amendment would accomplish and would support it for that reason. The other side would discuss what the amendment was designed to do and attack it on that basis. Emmerich of the McComb *Enterprise-Journal* attacked the amendment on the basis of the way in which it would be applied. "And what does constitute a lack of good moral character? . . . If (the provision) were interpreted strictly, I don't think very many of us would meet the qualifications." The purpose of the amendment, according to Emmerich, was "an ill disguised attempt to keep qualified Mississippi Negroes from voting."[269] At the same time, the *Clarion-Ledger* supported the amendment believing that it was designed to safeguard segregation, something which also would not be abused by the circuit clerks.[270]

Bitterness and sarcasm were not uncommon. Even the *Delta Democrat-Times* said, "The Mississippi legislature can sometimes be compared to the well-known Pavlovian dog, which when a bell rang, would run out and slobber through reflex action. Anytime the word segregation is mentioned, an overwhelming majority of the Legislators promptly take leave of their faculties and blindly react."[271] The voters did march to the polls in lockstep to vote for the amendment, and on November 8, 1960 the good moral character requirement was added to the state constitution by an almost three to one majority.

The Mississippi Legislature did not see fit to pass legislation to implement this constitutional provision until 1962, when there were approximately 26,000 registered Negro voters, about 6.1% of the adult Negro population of the State.[272] Then in the regular session of the State Legislature of 1962, the following bills were passed to further this

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[269] *Ibid.*, p. 4.

[270] *Clarion-Ledger*, 1 Nov., 1960, p. 6.

[271] *Delta Democrat-Times*, 6 Nov., 1960, p. 4.

[272] *Commission on Civil Rights Report*. Voting, p. 277.

amendment: House Bills No. 899, No. 903, No. 904, No. 905, and No. 822.

House Bill No. 899 was enacted to enforce the new provision and added to the general registration provisions of Section 3235 *Miss. Code*, 1941, as amended, that any person registering after the effective date of the Act must be of good moral character. Apparently, this qualification must be met by persons who had previously been registered voters in Mississippi and are now, for one reason or another, re-registering. Thus it would seem difficult to argue that the enforcement statute creates a "grandfather" clause. Probably the "grandfather" clause was omitted because the qualification is a simple and vague one, which could be met by any white. Nevertheless it would be quite possible to use this law against the white labor unions in this State. Indeed, the AFL-CIO has denounced this law on these grounds. House Bill No. 900 adds nothing new. It simply repeats the work of No. 899 by tacking the good moral character provision on to Section 1, Chapter 104, Laws of 1955, Extraordinary Session, which is the literacy test provision.

House Bill No. 903 provides that if the applicant passes all other qualifications but fails to "demonstrate to the registrar that he is of good moral character", the registrar must endorse the application, "failed" and state on it the "facts or reasons why he finds the applicant not to be of good moral character." If the applicant fails for some other reason, the registrar need not specify the reason. If the applicant is not of good moral character and also fails some other requirement, the registrar, may, if he wishes, specify that the applicant is not of good moral character and state his reasons. Apparently, by the wording of this Bill, the burden of proving good moral character is placed on the applicant. It is difficult to see how anyone could sustain such a burden of proof except through the grace of the registrar. No standards have been given to the

registrars as a guide to the administration of this law. On the contrary it would seem that the registrars have been given naked and arbitrary discretion in the performance of their duties. House Bill No. 905 is not of great importance. Still it does tack the good moral character provision on to Section 1, Chapter 449, Laws of 1960 and Section 1, Chapter 99, and Section 5, Chapter 102, which deal with the form of registration application and record books. It adds the good moral character requirement to the application form, Section 5, paragraph 3, makes clear that, although other new qualifications do not apply to persons registered before January 1, 1954, the good moral character provision has no "grandfather" clause and applies to all applicants, even though they have been previously registered.

Finally House Bills No. 822 and No. 904 add a new dimension to the good moral character provision. While the provision itself provides an arbitrary discretion to the registrar, these two bills establish a vicious mechanism for the intimidation of potential voters. This allows private individuals to act by themselves or in conspiracy with the registrar to intimidate potential voters. The bills provide that after an application for registration is received and within ten days, the registrar shall publish the name and address of the applicant in a local newspaper once a week for two weeks. Within two weeks after the last publication, any other registered voter in the county may file an affidavit challenging the good moral character of the applicant. If no challenge is filed, the registrar must himself determine the moral character of the applicant and either pass or fail him. Thus even if no challenge is made, the effect of these laws is to make known to all whites in the county the name of the Negro who has tried to register. It also provides for a delay in registration of thirty-eight days. If a challenge is filed, the registrar sets a time for a hearing and after considering all the witnesses and evidence presented, makes

his finding and states his reasons on the application. The registrar's verdict may be appealed to the Board of Election Commissioners. Of course, it is patently obvious, that in most rural Mississippi communities, this law will rarely be used to challenge the good moral character of the prospective Negro voter. Rather knowing that his name will be published in a local newspaper, the Negro will not even attempt to register to vote. Even if he does attempt to register, the potential for economic, psychological, and even physical coercion is made far more easy by this law.

In the end, it would seem that both the present and the past structure of the Mississippi voting laws are best described by the following quotation:

> "Whether judgment be based on voting turnout or the range of constitutional and statutory restrictions, Mississippi is a state of limited franchise . . . Another question necessarily connected with the preceding ones is whether the State proposes to discriminate against Negroes either by Constitutional provision or by discriminatory administration of election laws. Either method is a violation of the Fourteenth and Fifteenth Amendments to the National Constitution if the discrimination can be proved to the satisfaction of the courts . . . The substitute for outright discrimination is the proliferation of restrictive requirements. . . .
>
> The pattern of restrictive requirements which has just been described is more extreme than that of any of the other forty-nine states. It is the only Southern State with a combination of 'understanding', literacy, poll tax, and two year residence requirements." [273]

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[273] Hobbs, E. H. (editor) *Yesterday's Constitution Today: An Analysis of the Mississippi Constitution of 1890*. State Adm. Series #19, Bursar of Public Administration, University, Miss., 1960. "Suffrage and Elections," by Barret, R.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964.

No. 73

UNITED STATES OF AMERICA,
Appellant,

vs.

THE STATE OF MISSISSIPPI; ROSS R. BARNETT, JOE T. PATTERSON, AND HEBER A. LADNER, as members of the Mississippi State Board of Election Commissioners; H. K. WHITTINGTON, Circuit Clerk and Registrar of Amite County; MRS. PAULINE EASLEY, Circuit Clerk and Registrar of Claiborne County; J. W. SMITH, Circuit Clerk and Registrar of Coahoma County; MRS. MARTHA TURNER LAMB, Circuit Clerk and Registrar of Leflore County; T. E. WIGGINS, Circuit Clerk and Registrar of Lowndes County; and WENDELL R. HOLMES, Circuit Clerk and Registrar of Pike County,
Appellees.

APPEAL BY UNITED STATES FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

OBJECTION OF ALL APPELLEES TO GRANTING LEAVE TO THE AMERICAN CIVIL LIBERTIES UNION TO FILE AMICUS CURIAE BRIEF

All Appellees, Defendants below, ten in number, hereby file their *objections* or *opposition* to the motion by the American Civil Liberties Union (Inc.) (hereinafter, whenever possible, referred to as *Movant*) for leave to file a brief *amicus curiae* in this cause in support of Appellant's contentions; but which motion shows, among other deficiencies, that Movant proposes to inject into this case or advance in this Court a new constitutional issue *not heretofore presented by Appellant, the United States,* in the Court below or in this Court. As to Appellees, Movant requested consent to such filing from only the State of Mississippi; it refused; all other Appellees would have refused. Appellees' objections (filed within the prescribed period permitted, on or before November 10, 1964) upon which they ask the Court to deny said motion and which will be amplified hereinafter, are

APPELLEES' OBJECTIONS

1. Movant *erroneously seeks* to introduce into this case at this point in this Court *a totally new constitutional issue* (Motion, p. 2, ¶3) which Movant's motion affirmatively shows was not and is not advanced or presented by Appellant United States to the Court below, or here. That new constitutional issue is Movant's attack upon the facial constitutionality of the Mississippi poll tax requirement to vote, in Section 241 of the Mississippi Constitution of 1890 —the Mississippi poll tax requirement applicable to State elections only. Said Section 241 *has no application of any kind to registration to vote.*

2. *The motion does not allege or show,* as required by Rule 42(3) of this Court, *that the 120 page brief,* including 22 pages of appendix, *prepared and filed herein on behalf of Appellant by the United States Solicitor General,* his Assistant, and *the staff* of the U. S. Attorney General *does not adequately present to this Court all aspects of this case or cause as made by Appellant,* Plaintiff below, in the U. S. District Court below as reflected by the record thereof filed in this Court.

3. Said motion *does not state or show that Movant,* as required by Rule 42(3) of this Court, *has an interest that would* be affected by the decision of this Court in this cause. Movant is not and cannot be or become registered to vote or vote in the District of Columbia or the States of New York, Illinois or Mississippi or in any other State in the Union.

BRIEF STATEMENT OF THE CASE SUFFICIENT FOR THE DETERMINATION OF MOVANT'S MOTION AND APPELLEES' OBJECTIONS

Appellant United States filed its complaint in the District Court below charging that the following sections of the Mississippi Constitution (1890) and statutes dealing with the qualifications to *register* to vote are unconstitutional on their face as violative of the 14th and 15th Amendments to the United States Constitution and Title 42, U.S.C., Sections 1971(a) and 1974, as they read on August 28, 1962, it sought an injunction to prevent their enforcement. Said Mississippi sections are: Sections 241A and 244 of said Constitution; Mississippi statutes, Mississippi Code 1942 Recompiled, Section 3209.6, as amended, 1962; and Chapters 570, 571, 572 and 573, Mississippi Laws of 1962; (said sections of the Constitution and statutes are copied in the

above order in the appendix to Appellant's brief on the merits at pages 106-115, inclusive, 99 and 105; thus we do not recopy them. That portion of Section 241 of said Constitution of Mississippi dealing with the said Mississippi poll tax requirement as to the act of voting was not and is not mentioned by Appellant—is not challenged and no issue is made thereon, at any point or place, in this cause as presented by the United States.

A 3-Judge Court was assembled. Appellees, Defendants below, filed, among other documents, their motion to dismiss for failure to state a claim upon which relief could be granted. The Court sustained that motion by its opinion printed in Appellant's jurisdictional statement, Appendix B, pages 28-179; and entered a judgment thereon as printed as Appendix C at page 180 thereof. Appellant appealed.

DOCUMENTS BEFORE THE COURT AT THIS POINT

We assume that only the documents filed herein will be considered by the Court in determining said motion, and which are: (1) Movant's motion; (2) these objections of all Appellees; *and the following documents* prepared and filed on behalf of the United States by its attorneys of record, *Solicitor General of the United States, his Assistant, Burke Marshall, Assistant Attorney General of the United States, and six other able members of the legal staff of the United States Department of Justice, and which documents are*: (a) jurisdictional statement *of twelve pages;* (b) *a 98 page brief on the merits of the case*, plus a 22 page appendix thereto; (c) the complaint of Appellant drawn and filed in the District Court by the United States Attorney General Robert F. Kennedy (R. 1-23 inclusive), together with two of his Assistants and

the local U. S. Attorney; (d) the remainder of the 1644 page record on appeal.

From the record before the Court it is clear that this Court *should not conclude* that eminent counsel of record for Appellant *have failed to adequately present to this Court the case of Appellant as shown by the appeal record from the District Court. Unless* the Court concludes that said attorneys of record *have failed to adequately present this case to this Court in all of its aspects, as made in the District Court,* then we submit *the motion should be denied* irrespective of all other considerations.

The rule of this Court applicable to this motion and these objections is Rule 42, Briefs of an Amicus Curiae, ¶3, which is quoted thus:

> "3. When consent to the filing of a brief of an *amicus curiae* is refused by a party to the case, a motion for leave to file may timely be presented to the Court. It shall concisely state the nature of the applicant's interest, set forth facts or questions of law that have not been, or reasons for believing that they will not adequately be, presented by the parties, and their relevancy to the disposition of the case; and it shall in no event exceed five printed pages in length. A party served with such motion may seasonably file an objection concisely stating the reasons for withholding consent."

APPELLEES' OBJECTION 1. MOVANT ERRONEOUSLY SEEKS TO INJECT OR ADVANCE HERE IN THIS COURT AN ENTIRELY NEW CONSTITUTIONAL ISSUE INTO THIS CASE

Movant erroneously seeks to inject or advance a totally new constitutional issue into this case in this Court at the appellate level—one not advanced by Appellant here or in the Court below—not presented to it, and not passed

upon by it. That new issue is Movant's attack upon the constitutionality of the Mississippi poll tax requirement to perform the act of voting, in Section 241 of the Mississippi Constitution—which is applicable only to State elections; and which *has nothing whatever to do with registration to vote.* An amicus, under said Rule 42(3), cannot inject such a new issue into a case in this Court. At page 2 of the motion, ¶3, Movant candidly admits and asserts that it is injecting such a new issue. This Court has recently *refused to "pass upon" a new issue* sought to be injected into a case *here even though the amicus brief was filed by consent of the parties.* The Court so held in the case of *Knetsch* v. *United States,* 364 U.S. 361, 370, 5 L. Ed. 2d 128, 134, No. 23, Oct. 1960 Term—there certiorari had been granted and all parties consented to the filing of amicus briefs; *when an amicus brief* sought *to raise a new point* which had *not been advanced by the petitioners for certiorari,* this Court, speaking through Justice Brennan, at page 370 of the U.S. Report, 134 L. Ed. Report, said:

> "Some point is made in an amicus curiae brief of the fact that Knetsch in entering into these annuity agreements relied on individual ruling letters issued by the Commissioner to other taxpayers. *This argument has never been advanced by petitioners in this case. Accordingly, we have no reason to pass upon it."* (Emphasis added) (In view of this statement we do not print said Section 241 of the Mississippi Constitution of 1890.)

To the same effect is the case of *Moffat Tunnel Improvement Dist. et al.* v. *Denver & S. L. Ry. Co.,* 45 F.2d 715, 722 (10 Cir. 1930), wherein the court says at page 722:

> "Briefs are received from amici curiae to aid the court in disposing of issues *before the court*; friends of the court cannot introduce new issues, nor can they sup-

plant the body to which the legislature has delegated the control of the affairs of the district." (Emphasis added)

The foregoing is sufficient basis for denying the said motion of the American Civil Liberties Union. *Movant* recognizes the above rule at page 2, ¶4 of its motion, but seeks to avoid it by reference to various authorities at page 3 thereof. None of the authorities mentioned by Movant support its position or assertions.

What the American Civil Liberties Union is seeking to do here is to analogize itself into the position of or assert the things and matters asserted by the *amicus in the cases cited by it at page 3 of the motion.* The authorities cited by Movant clearly show that Movant here cannot analogize itself, comparably in the case at bar, to the amicus in those cases. The language of the opinions themselves *and the files of this Court may be checked,* if desired, *to verify our statements hereinafter made upon said citations.* We will give the number and term of the cases in this Court which Movant cites so that examination of the files therein, if desired, will be facilitated. A general statement applicable to all of said authorities is put thus: The action by the *amicus* in *Faubus* and *Bush, infra,* was *requested and authorized* by order of the District Court in each case—certainly there is no similarity between Movant here and the Faubus and Bush amicus, the United States; in all other cases so cited by Movant the amicus brief was either filed by the United States as a matter of right, or the amicus brief was filed *pursuant to the consent of all parties to the cases.* Movant failed to point out the foregoing features in connection with the authorities cited by it. Here there was no consent from any Appellee; Movant is put to his motion under said rule of this Court 42(3).

For clarity of application, we will take up the foregoing cases *in a different sequence* than that in which they are cited at said page 3, including the footnote. The said cases cited by Movant, together with their number and term, are as follows: *Bush et al.* v. *Orleans Parish School Board et al.*, 191 F. Supp. 871 (E.D. La. 1961), affd. *per curiam*, 367 U.S. 908 (1961), 6 L. Ed. 1249 (as *Denny et al.* v. *Bush et al.*, No. 868, Oct. 1960 Term); *Faubus et al.* v. *United States et al.*, 254 F.2d 797 (8th Cir. 1958); *Mapp* v. *Ohio*, 367 U.S. 643, 6 L. Ed. 2d 1081, No. 236, Oct. Term, 1960 (1961); *Sweatt, Petitioner,* v. *Painter et al.*, 339 U.S. 629, 94 L. Ed. 1114, No. 44, Oct. Term, 1949 (1950); *Hazel-Atlas Glass Co., Petitioner,* v. *Hartford-Empire Co.*, 322 U.S. 238, 88 L. Ed. 1250, No. 393, Oct. Term, 1943 (1944).

In *Sweatt, supra, all amicus briefs were filed by consent of all parties.* Movant's comment in the footnote at page 3 of its motion and the language and action of the Court, apparently directed to "stronger mandate" and *its rejection* of suggested "broader issues" and the restriction of the opinion to the constitutional questions *only in the context of the particular case before the Court* demands the following citation from page 631 of the U.S. Report, p. 1118 of the Law Edition Report, thus:

> "Broader issues have been urged for our consideration, but we adhere to the principle of deciding constitutional questions only in the context of the particular case before the court. We have frequently reiterated that this court will decide constitutional questions only when necessary to the disposition of the case at hand, and that such decisions will be drawn as narrowly as possible. Rescue Army v. Municipal Court, 331 U.S. 549, 91 L. Ed. 1666, 67 S. Ct. 1409 (1947), and cases cited therein. Because of this traditional reluctance to extend constitutional interpretations to situations or facts which are not before the court, much of the excellent research and detailed argument presented in these cases is unnecessary to their disposition."

Faubus, supra (8th Cir. opinion): It cannot be used to analogize or transform Movant into and make it the equivalent of either the U. S. or the Attorney General thereof or any other official. There, by order of the District Judge (254 F.2d 802), the Court *"requested and authorized"* the U. S. Attorney General, and others named, to appear in the proceeding and they were *"directed"* to immediately file whatever was necessary within the terms of the order and proceed to stop "interferences" and "obstruction" to the order of the Court requiring integration of Central High School in Little Rock, Arkansas; upon such an order the United States, by its Attorney General and the U. S. Attorney entered the case as *amicus curiae* and proceeded to "(p. 805) *vindicate its honor*" (referring to the Court); "They were acting under the authority and direction of the Court to take such action as was necessary *to prevent its orders and judgments from being frustrated and to represent the public interest in the due administration of justice*" (p. 805).

Bush, supra, 191 F. Supp. 871, followed *Faubus, supra.* The *United States* by order of the District Court was *"requested* and *authorized* to appear in these proceedings as *amicus curiae"* and given the powers set out in the order at page 876 of the opinion—for the purpose of bringing the United States in was the same as in Faubus. The Court says, p. 876: *"It should also be stressed that the government appeared at the court's request."* Thus, under Bush the holdings therein *cannot be used* to transform *American Civil Liberties Union* into a *counterpart of the United States.*

In *Hazel-Atlas, supra,* the United States, through Solicitor General Faye, filed an *amicus brief* (p. 239)—as the United States had a right to do without a Court order. In *Mapp, supra,* all parties to the suit *consented* to the filing

of *amicus briefs*, including that of the American Civil Liberties Union—its counsel's argument time must have been subtracted from the time of the Defendant. *Krislov, The Amicus Curiae Brief: From Friendship to Advocacy*, 72 Yale L.J. 694 (1963), cited by Movant at p. 3 of its motion *does not in any way assert anything contrary* to the contentions of Appellees in their objection to Movant's motion.

APPELLEES' OBJECTION 2. THE UNITED STATES IS BEING ADEQUATELY REPRESENTED BY ITS EMINENT ATTORNEYS OF RECORD

We submit that the case of the United States *as made in the District Court has been, and is being, adequately presented to this Court by its able attorneys of record.* A fair reading of Movant's motion, we believe, does not really charge to the contrary, but if it be asserted that it does, then we say that it is in error. Even a casual examination of the documents filed on behalf of the United States shows this. We cannot conceive how this Court could reasonably find that the efforts of Appellant's counsel do not constitute *adequate representation. In the absence of such a finding, Movant's motion should be denied.* Thus, Movant has not shown in its motion what said *Rule 42(3) requires* to justify *an amicus brief* by it.

Any additional matter, which is completely outside the issues raised by the parties hereto, is *only* a burden on this already overworked Court

APPELLEES' OBJECTION 3. MOVANT HAS NOT SHOWN AN INTEREST IN THIS CAUSE SUFFICIENT TO JUSTIFY ITS FILING AN AMICUS BRIEF

Clearly Movant has not shown an interest in this cause sufficient to justify granting leave to file an *amicus brief*. The language of Justice Goldberg in his dissent in the case of *United States* v. *Barnett et al.*, 84 S. Ct. 984, 12 L. Ed. 2d 23, 57 (1964), squarely supports our objections. At p. 1011 of the S. Ct. Report, p. 57 of the Law Edition Report, he said:

> "A traditional function of an amicus is to assert 'an interest of its own separate and distinct from that of the [parties],' whether that interest be private or public. It is 'customary for those whose rights depend * * * on the outcome of cases * * * to file briefs amicus curiae, in order to protect their own interests.' Weiner, Briefing and Arguing Federal Appeals (1961) 269."

It is clear from the foregoing and the documents now before the Court and the parties which have been filed in this cause that Movant does not have any right which depends on the outcome of this case.

This lack of right or interest on the part of Movant justified the denial of its motion for leave to file an amicus brief herein.

CONCLUSION

In view of the foregoing, Appellees respectfully request the Court to deny the motion of American Civil Liberties Union to file an *amicus curiae* brief in this case.

Respectfully submitted this the 6th day of November, 1964.

Respectfully submitted,

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No. 73

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964.

UNITED STATES OF AMERICA,
Appellant,

vs.

THE STATE OF MISSISSIPPI et al.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

BRIEF FOR THE STATE OF MISSISSIPPI

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No. 73

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964.

UNITED STATES OF AMERICA,
Appellant,

vs.

THE STATE OF MISSISSIPPI et al.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

BRIEF FOR THE STATE OF MISSISSIPPI

PRELIMINARY STATEMENT

Because the position of the Appellee, The State of Mississippi, as to the matters presented herein, is entirely different from the position of any other Appellee in this action, this separate brief is presented. The State of Mississippi adopts the briefs of the other Appellees in response to the remaining points of argument raised on this appeal.

SUMMARY OF THE ARGUMENT

I.

The State of Mississippi Was Neither a Proper nor a Necessary Party to This Action.

A. The State of Mississippi did not enforce or execute the provisions of any statute alleged to be unconstitutional. The statute, 28 *U.S.C.* 2281, under which the District Court was convened, contemplates and embraces only actions against officers of the State who are enforcing or executing allegedly unconstitutional statutes.

B. The joinder of The State of Mississippi as a Defendant in the action involved in this appeal is not within the contemplation of 42 *U.S.C.* 1971. This statute is directed only to a *person* who is engaged, or about to engage, in an act or practice which would deprive an otherwise qualified citizen of the United States of the right to vote on the basis of such citizen's race or color. The State of Mississippi is not a "person" within the meaning of the statute. The action contemplated by § 1971 is, by its precise terms, a "proper proceeding for preventive relief" against "an *official* of a state or subdivision thereof." Any unconstitutional Constitution, laws, customs, usages or regulations of a State are not even to be considered in such an action. Subsection (e) of § 1971, by its express terms and definition, also delineates the civil action authorized to be an action against an official acting within a *subdivision* of a state. Read as a whole, as it must be, the statute is replete with indications that it contemplates preventive relief against individual, personal acts under color of law. The statute's permission to *join* the State in the principal action directed against an individual official was not intended to create a right of action against the Sovereign State, but was intended to be a

remedial procedural device to make effective preventive relief that would otherwise be granted against offending *individual persons,* if such individual became unable or unwilling to function. The only action which this section permits to be *instituted* against a State is an action brought where neither the individual officer allegedly engaged in prohibited acts or practices, nor any successor, is available to be sued. The legislative history of § 1971, and particularly the last sentence of subsection (c), clearly negates the Attorney General's topsy-turvy claim of a right to *institute* the present action against The State of Mississippi and *join* various registrars as appendages to that proceeding.

C. No proper preventive relief could be granted against the sovereign State. Injunctions look only to the future. Injunctive relief addressed to the State would continuously presume that the State will, unless enjoined, commit a future violation of constitutional rights, which it is incapable of doing. Such a presumption of future wrongdoing is contrary to every established rule of law. If agents of the State act contrary to its laws and the Constitution of the United States, they are not acting in concert or participation with the State and, in fact, are no longer its agents and thus would not be subject to an injunction order directed to the State. An abstract injunction addressed to the State means nothing, for the State acts only through *persons* who compose the legislative, executive and judicial branches thereof. An action for proper preventive relief against individual officials and their successors shown to be acting contrary to their authority from the State and unconstitutionally, is the only *effective* action and is the only action contemplated or permitted by § 1971.

II.

The Presence of the State of Mississippi As a Defendant Raises Serious Questions As to the Constitutionality of § 1971 under the Construction Contended for by the Government Which Can and Should Be Avoided in the Present Action.

A. Congress cannot blind the courts to their duty to properly exercise the judicial power with which they are invested by legislatively pronouncing a non-existent legal relationship as "deemed" to exist. The last sentence of § 1971 (c) requires the court to *conclusively* accept as a fact that which is not and cannot become a fact. It attempts to breathe life into a void act or deed, transport its effect to a sovereign State and, by that means, condemn the State. The effect of this attempted invasion of the judicial power would also be to impute a crime to a sovereign State through the creation of a fictitious agency relationship, since any individual act sufficient to invoke the provisions of § 1971 would likewise violate 18 U.S.C., § 242. To hold that a criminal act can be so "deemed" the act of the State, would be to allow the sovereign State to be made a criminal by the action of an individual acting contrary to his statutorily defined duties.

B. *There is no such thing as a bad state.* Within their respective spheres of authority, the individual states are equally as sovereign as the limited government of the United States. There is a significant legal difference between the group of individuals who compose the government of a State and the State itself. While these individuals are capable of committing acts within the ambit of "State Action", they are incapable of binding the ideal person of the State itself by their lawless usurpation. To

characterize this firmly entrenched and long-honored judicial distinction as a mere "convenient collective" or "short-hand", as the government has done, or trite "Eleventh Amendment dialectic", as the minority opinion did below, is to impute to this court and every other court which has announced and followed this rule, an intention to commit an ingenious or sophisticated violation of the clear thrust of the Constitution.

C. The Court will not anticipate a question of constitutional law in advance of the *necessity* of deciding it.

It is likewise committed to restricting its constitutional decisions, whether in favor of constitutionality or nullification, to cases between adversary parties which present a precise set of facts to which such decision is to be applied. The Court has consistently refused to allow parties to conjure up hypothetical cases which may turn out to provoke premature or overly broad interpretations. These rules govern where, as here, effective ways are readily available to determine the controversy presented without delving into speculation or hypothesis.

The judgment of the District Court dismissing this action as to the Defendant, The State of Mississippi, was correct and should be affirmed.

ARGUMENT

I.

The State of Mississippi Was Neither a Proper nor a Necessary Party-Defendant in Action.

A.

The State of Mississippi Is Not a Proper Defendant Within the Contemplation of 28 U.S.C., § 2281.

Section 2281 provides that only a three-judge district court composed as required by Section 2284 of the same title, may adjudicate a State statute unconstitutional. That same section defines the relief which may be sought from such a special three-judge court as an interlocutory or permanent injunction:

> ". . . restraining the action of any *officer* of such State in the enforcement or execution of such statute. . . .".

The statute only provides for a suit against the enforcing officer of such State—not against the sovereign State.[1]

These special three-judge courts, just as every Federal court inferior to this Supreme Court, are courts of special and limited jurisdiction. These courts must find authority for all they do in the express language of Congressional enactments or by necessary implication therefrom.[2]

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1. *Fitts* v. *McGhee*, 172 U.S. 516.

2. *Cumberland Telephone and Telegraph Co.* v. *Louisiana Public Service Commission et al.*, 260 U.S. 212, 216, 217; *Ayrshire*

In the *Cumberland* case the Court, referring to the predecessor of the present three-judge statute, said:

> "This is a question of statutory power and jurisdiction, not one of judicial discretion or equitable consideration."

This Court, in the *Cary* case, said:

> ". . . the courts created by statute, must look to the statute as the warrant for their authority; certainly they cannot go beyond the statute, and assert an authority with which they need not be invested by it, . . ."

The general grant of jurisdiction to United States District Courts over civil actions commenced by the United States, in 28 *U.S.C.* 1345, does not in any way broaden the strict and technical interpretation which this court has held should be given to § 2281. Judge Cameron in the majority opinion below, summarized this Court's holdings as to the proper construction of § 2281 thus:

> "Three-Judge courts constitute a unique burden on the Federal Judiciary. To keep this burden to a minimum, the statutes vesting the right to call such courts to sit in judgment of constitutional challenges are to be strictly construed as a procedural technicality and not as a broad remedial social policy. See *Phillips* v. *United States*, 312 U.S. 246; *Stainback* v. *Mo. Hock Ke Lok Po*, 336 U.S. 368; and *Kesler* v. *Dept. of Public Safety*, 369 U.S. 153."[3]

No case cited in the brief for the United States or disclosed by our research has ever expressly recognized any

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Collieries Corporation et al. v. *United States et al.*, 331 U.S. 132, 138, 139; *United States* v. *Hudson and Goodwin*, 11 U.S. (7 Cranch) 32, 33; *Cary* v. *Curtis*, 44 U.S. (3 How.) 236, 246; cf. *Glidden Co.* v. *Zdanok*, 370 U.S. 530, 551, 552.

3. R. 1533, 4.

authority under § 2281 to bring an action against a State in its governmental capacity. The point does not appear to have been specifically raised in the case of *United States* v. *Louisiana*.[4] All other such actions seeking to enjoin actions of State officials on the grounds of statutory unconstitutionality have been brought, as the statute plainly authorizes, against those officials who actually enforce the allegedly offensive statute. The fact that the government of the United States brings the action cannot change the wording of the statute on which it relies.[5]

B.

The State of Mississippi Is Not a Proper Defendant Within the Contemplation of 42 U.S.C., § 1971.

This statute has had a long and varied history. It had its origin in the Force Acts[6] produced by the Reconstruction Congress. A number of its sections relating to registration and other procedures were later repealed or declared unconstitutional[7] but subsection (a) of the present statute relating to the act of voting has remained intact through the years.[8] A portion of the present section was added by the Civil Rights Act of 1957,[9] a part was added by the Civil

4. 225 F. Supp. 353.

5. Cf. *Jones et al.* v. *Watts, Clerk, et al.*, 142 F.2d 575, 163 A.L.R. 240.

6. Act of May 31, 1870, 41st Congress, 2nd Session, Chapter 114, 16 *Stat. at L.* 140.

7. *U. S.* v. *Reese*, 92 U.S. 214; *U. S.* v. *Lackey*, (6 Cir.) 107 Fed. 114; *Karem* v. *U. S.*, (6 Cir.) 121 Fed. 250; and *U. S.* v. *Sanges*, (5 Cir.) 48 Fed. 76.

8. For a complete history, see Section V of Judge Cameron's dissent in *United States* v. *Alabama*, 304 F.2d 583, 601.

9. Act of Sept. 9, 1957, *Public Law* 95-315, Part. IV, § 131, 71 *Stat.* 637.

Rights Act of 1960,[10] and a part was added after this case was decided by the Civil Rights Act of 1964.[11]

In all of its versions, the thrust of this statute has been directed expressly or by judicial construction to "persons" —State officials or individuals acting under color of law— allegedly engaged or about to engage in an act or practice which would deprive "otherwise qualified" citizens of the United States of the right to vote on the basis of their race or color.[12] The State of Mississippi is not a "person".[13]

Section 1971 throughout makes it patent that the action it authorizes is an action against individual State officials, not the State itself. Indeed, the right defined and secured by subsection (a) expressly *excludes* "any constitution, law, custom, usage or regulation of any State." In subsection (c) the statute speaks not only of "person" but also of proceedings wherein "any official of a State or subdivision thereof" is alleged to have committed a proscribed act or practice. Subsection (d) exempts the individual whose rights are being asserted from having to *exhaust* remedies which the State law provides for his protection.[13a] Under subsection (e), the Attorney General is required to transmit copies of the court's order to "appropriate election officers" not *all* such officers. This same subsection speaks of an

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10. Act of May 6, 1960, *Public Law* 86-449, Title IV, § 601, 74 *Stat.* 90.

11. Act of July 2, 1964, *Public Law* 88-352, Title I, § 101, 78 *Stat.* 241.

12. *United States* v. *Raines*, 362 U.S. 17.

13. *United States* v. *United Mine Workers*, 330 U.S. 258; *Monroe* v. *Pape*, 365 U.S. 167; see also the authorities cited and reasoning by Judge Cox in his concurring opinion, R. 1612, 1613.

13a. We cannot agree that these words free the litigant from even *commencing* or reasonably *pursuing* these remedies when they may provide a State remedy for a State error.

"affected area", and defines this term to mean "any *subdivision* of the State" where violations of the section have been proven. Each of these provisions is inconsistent with the position that the statute authorizes the assertion of an action against the State, except under the limited conditions prescribed in the last sentence of subsection (c) which were not present in this case. Subsection (f) relating to contempt, refers, as it must, exclusively to a "person" and uses the masculine pronoun throughout.

Statutes must be read with a due regard to the whole law and their meaning must be fairly interpreted from the entirety of the statute.[14] When this is done, § 1971 can be seen even more clearly to provide for preventive relief against individual, personal acts under color of law. The statute's permission to *join* the State in the principal action against the individual official, was obviously not intended by Congress to create a right of action against the sovereign State. The legislative history of the 1960 amendment discloses no such intention. Congressman McCulloch, who introduced the legislation which contained the reference to the joinder of the State, explained:

> "Mr. McCulloch. Let me say the way the gentleman has presented the matter is accurate. But I want to say this, and I want you to note the significance of what I am going to say. When the Attorney General brings that case into the Federal Court, with all of the authority and solemnity with which a case in a Federal Court is brought, *there is a naming of defendants, and they are State officials.* In that suit, the Attorney General of the United States must prove to the satisfaction of the Federal Court that there is a pattern or practice in the political subdivision in ques-

14. *United States* v. *The Heirs of Boisdore*, 49 U.S. (8 How.) 113; *Mastro Plastics Corp.* v. *National Labor Relations Board*, 350 U.S. 270, 285; *Richards* v. *United States*, 369 U.S. 1.

tion which denies people otherwise qualified, the right to vote by reason of race or color. So there has been *a day in court of the person* who could controvert by evidence that which is stated in the complaint by the Attorney General."[15]

In the hearings before the Committee on the Judiciary of the United States Senate on March 28 and 29, 1960, the Attorney General who sponsored the legislation stated:

> "Mr. Rogers. No, Senator; you see this is merely implementation of the Civil Rights Act of 1957, and under the Civil Rights of 1957 that determination of discrimination is made by the judge. And if Congress enacts this bill, the judge would make the determination as to whether a pattern or practice of discrimination existed *in that judicial district* or not."[16]

Judge Walsh, his deputy, took the same position.

> "Senator McClellan. How can you establish a practice by just one single act or one or two acts, is what I am trying to find out.
>
> Mr. Walsh. Well, the number of individual acts related to a single election would vary. I do not know how many there would be.
>
> The Chairman. Would that be in a county now or a judicial district?
>
> Mr. Walsh. It could be either one—really, *it would relate to the area administered by the single officer.*
>
> The Chairman. You mean by the judge, the district judge?
>
> Mr. Walsh. No, I was thinking of *the State officer,* Senator, Mr. Chairman."[17]

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15. 106 *Congressional Record* 5487, 86th Congress, Second Session, 1960.

16. Report of Hearings before Committee on Judiciary, U. S. Senate, March 28 and 29, 1960, p. 15.

17. *Idem.*, p. 69.

This particular amendment was intended to be a remedial procedural device to make effective preventive relief against offending individual persons in those rare situations where the individual officer might become unable or unwilling to function. This is the interpretation given this act by the courts when the point was properly raised. In *United States* v. *Atkins*[18] the Fifth Circuit ruled that a general injunction should have been ordered against the registrar and, in a footnote to the ruling, stated:

> "That injunction should be addressed to the Registrars and their successors in office, but, so long as there is a functioning Board of Registrars, it should not be addressed to the State. *If a State can properly be enjoined* . . . that should be done only when absolutely essential to afford effective relief."

This holding has been followed in *United States* v. *Ramsey*[19] in affirming the dismissal of the State as a party.

If the federal Attorney General's contention that permission to *join* the State was intended by Congress to create an independent right to *institute* a suit against the State as a type of joint tort-feasor, then it would have been excess verbiage for Congress to add the clause permitting institution of an action against the State where the individual enforcement official was no longer available. In the words of a homely, but apt analogy—should Congress be held to have cut a big hole in the fence for big cats then added a little hole for lesser felines? Such a construction is condemned.[20]

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18. 323 F.2d 733, 740.

19. (5 Cir.) 331 F.2d 824.

20. *Washington Market Company* v. *Hoffman*, 101 U.S. 112, 115; *Jarecki* v. *Searle & Co.*, 367 U.S. 303, 307.

In the brief for the United States (p. 59) the position was taken that this Court's affirmance of the case of *U. S.* v. *Alabama*, 371 U.S. 37, constituted an "implied" approval of the joinder of a State in an action where registrars were in office and amenable to suit. This case was No. 19051 in the 5th Circuit. An examination of all of the briefs and the opinion of the Fifth Circuit in this case disclosed that no question as to the propriety or the constitutional validity of joining the State in such circumstances was raised or discussed. The same case on appeal to this Court was No. 324, October Term, 1962. Again in this Court the question of the propriety or constitutionality of the joinder of the State was not raised. The petition for a writ of certiorari on page 2 thereof phrased the sole question before this Court as a question of whether or not the District Court could affirmatively order *"a board of registrars"* to order specified names of negro citizens placed upon the list of registered voters. It did not discuss the joinder of the State. This question was not discussed in the Brief for the United States in Opposition filed in this Court by the same Solicitor General Cox, Assistant Attorney General Marshall, and Assistants Greene and Rubin who are of counsel here. Neither this Court's nor the Fifth Circuit's opinions are implied authority for this point.

Common sense, the legislative history of § 1971, and every principle of statutory interpretation clearly negate the Attorney General's topsy-turvy claim of a right to *institute* the present action against The State of Mississippi, and *join* various individual officials as mere appendages to that state-wide proceeding. Neither logic nor precept support this type of circular reasoning.

C.

No Proper Preventive Relief Could Be Granted Against the Sovereign State.

The authority extended to the Attorney General by Congress in § 1971 extends only to the institution of a "*proper* proceeding for *preventive* relief" and it is only to such a proceeding against an individual that the State may be joined, under the last sentence of subsection (c) thereof. Congress did not attempt by this sentence to legislatively create a new type of judicial proceeding unknown to the judicial power. The authorization extended was for the institution of procedures which were judicially *proper* in accordance with established usages of law and equity.

The Complaint, as filed, sought a purely equitable remedy—that of an injunction. As to The State of Mississippi, the cause of action defined by the complaint lacked many, if not most, of the basic equitable principles which the courts of the United States inherited from the courts of England when their existence was created by the Constitution.[21]

A most basic principle of equity jurisprudence which is violated as to the sovereign State is the well-articulated rule that injunctions—the strong arm of equity—look only to the future.[22] The moving party must satisfy the court that such an order against a defendant not only is necessary, but that a threatened and impending injury can *only* be prevented by enjoining that defendant.[23]

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21. *Liberty Oil Company* v. *Condon National Bank et al.*, 260 U.S. 235; *Atlas Life Ins. Co.* v. *W. I. Southern, Inc.*, 306 U.S. 563, 568.

22. *Duplex Printing Press Co.* v. *Deering*, 254 U.S. 443, 464; Cf. *Douglas* v. *City of Jeannette*, 319 U.S. 157.

23. *Truly* v. *Wanzer*, 46 U.S. (5 How.) 141; *United States* v. *W. T. Grant Co.*, 345 U.S. 629, 633.

Inasmuch as an injunction addressed to a sovereign State looks to the future, the court granting such a writ must continuously presume that such sovereign will, unless the injunction is issued and continued, commit future violations of constitutional rights. Every State is, by the very nature of our Union, and under the uncontroverted decisions of this and every other Federal Court in which the question has been raised and decided, an ideal being, a perfect representative incapable of any such wrongdoing.[24]

The theory of the complaint as it seeks an injunction against the sovereign State requires a presumption of intentional, purposeful wrongdoing which is the reverse of every established principle and presumption of law.[25] If officers of a State, who derive their power to perform "state action" only from express statutes, act contrary to those statutes and the Constitution of the State, and contrary to the Constitution of the United States, such agents have departed not only from their office but also have lost even apparent authority to bind the sovereign.[26]

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24. Examples of the numerous holdings of this Court affirming this rule are the following cases: *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316; *Osborne* v. *Bank of the United States*, 22 U.S. (9 Wheat.) 738; *Texas* v. *White*, 74 U.S. (7 Wall.) 700; *Ex parte Virginia*, 100 U.S. 339; *Poindexter* v. *Greenhow*, 114 U.S. 270; and *Ex parte Young*, 209 U.S. 123.

25. *Rhode Island* v. *Massachusetts*, 37 U.S. (12 Pet.) 657, 751; *Ex parte Mitsuye Endo*, 323 U.S. 283, 300; *Lindsley* v. *Natural Carbonic Gas Company*, 220 U.S. 61; *Williamson* v. *Lee Optical of Oklahoma, Inc.*, 348 U.S. 483; *Snowden* v. *Hughes*, 321 U.S. 1, 8. Cf. *Watson et al.* v. *Buck et al.*, 313 U.S. 387, 400.

26. *Goltra* v. *Weeks, Secretary of War, et al.*, 271 U.S. 536, 544, 545.

Such false acts cannot be imputed to the State under any rule of agency or constitutional law.[27]

It is elementary injunction law that injunctions do not bind persons who are not acting in concert or in participation with the parties enjoined. Therefore, if a State official so far violates his statutory duties as to lose his identity and immunity as an agent of the State, even though he might violate rights specifically encompassed by an injunction order addressed to the State, he would be a stranger to the injunction itself and not subject to proceedings for enforcement or contempt. An injunction cannot be issued which is so broad as to make punishable the conduct of persons who act independently of the parties to the litigation.[28]

The court should also consider that an injunction directed against The State of Mississippi would constitute the invasion of a vital attribute of the sovereignty of the State. The government's prayer for relief clearly acknowledges the "need" for this when it requests the court to mandatorily enjoin The State of Mississippi to register, not all citizens, but *only Negroes* who possess certain delineated qualifications which the Attorney General thinks would be suitable, to-wit: (a) Age; (b) Residency; (c) Literacy; (d) Mental capacity; and (e) Lack of certain criminal convictions. This "suggestion" is a palpable invasion of the prerogative which, subject to specific con-

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27. *Whiteside* v. *United States*, 93 U.S. 247, 256, 257; *United States* v. *Lee*, 106 U.S. 196, 219, *Georgia Railroad and Banking Co.* v. *Redwine*, 342 U.S. 299, 304. See also *Larsen* v. *Domestic and Foreign Commerce Corp.*, 337 U.S. 682, 701.

28. *Scott* v. *Donald*, 165 U.S. 107; *Alemite Mfg. Corp.* v. *Staff*, 42 F.2d 832. See also *Regal Knitwear Co.* v. *National Labor Relations Board*, 324 U.S. 9 and *Chase National Bank* v. *Norwalk*, 291 U.S. 431.

stitutional provisions and limitations, belongs to the States—*i.e.* to determine the qualifications of voters.[29] This court has just recently reaffirmed its unwavering recognition of the basic right of the states to fix the qualifications of voters, in *Reynolds* v. *Sims*,[30] by recognizing that the equal protection clause of the 14th Amendment of the Constitution of the United States extends to "*qualified* voters" in State elections—a clear reference to and presumption of *qualification by State law*.[31]

For all of the foregoing reasons, an injunction in the abstract addressed to the State would have been *brutum fulmen*. It could provide no effective preventive relief against interference with the personal right of a qualified citizen to vote. The State acts through persons who compose its legislative, executive and judicial branches. These are the parties to whom effective, proper preventive relief can and must be addressed—a proper order specifically addressed to individual officials who perform acts under color of authority from the State, and to their successors in office, is the only effective preventive relief available. The State of Mississippi was neither a necessary nor a proper

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29. *Minor* v. *Happersett*, 88 U.S. 162; *United States* v. *Reese*, 92 U.S. 214; *Ex parte Yarbrough*, 110 U.S. 651; *McPherson* v. *Blacker*, 146 U.S. 1; *Mason* v. *Missouri ex rel. McCaffery*, 179 U.S. 328; *Pope* v. *Williams*, 193 U.S. 621; *Guinn* v. *United States*, 238 U.S. 347; *Breedlove* v. *Suttles*, 302 U.S. 277; *United States* v. *Classic*, 313 U.S. 299; *Lassiter* v. *Northampton County Board of Elections*, 360 U.S. 45.

30. 377 U.S. 533, 12 L. Ed. 2d 506, 523.

31. The Constitution impliedly recognizes that a State may have more than one standard of qualifications applicable to different elections by specifying *which* qualifications may be applied to elections for members of the House of Representatives (Article I. Section 2, Clause 1), and for members of the Senate (the 17th Amendment).

party-defendant to this proceeding for the granting of such relief.

This court has affirmed what every free man hopes—that the government of the United States is a government of laws and not of men.[32] Its authority is defined and limited by the Constitution.[33] That document is a law for rulers and people alike.[34] Supposedly beneficent aims, however great or well directed, can never serve in lieu of constitutional powers.[35] The history of the origin and ratification of the Constitution discloses no intention for that document to furnish a corrective for every conceived abuse of the powers retained by the State governments.[36] The impatience of those individuals currently holding positions in the Department of Justice with the modicum of authority granted to them by Congress, cannot supply the plain lack of such authority with a claim for its "need" nor with a claim that is "appropriate" or "fitting".

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32. *United States* v. *Dickson*, 40 U.S. (15 Pet.) 141.

33. *Ex parte Curtis*, 106 U.S. 371.

34. *Kennedy* v. *Mendoza-Martinez*, 372 U.S. 144.

35. *Carter* v. *Carter Coal Co.*, 298 U.S. 238; *Linder* v. *United States*, 268 U.S. 5, 22.

36. *Providence Bank* v. *Billings*, 29 U.S. (4 Pet.) 514.

II.

The Presence of the State of Mississippi As a Defendant Raises Serious Questions As to the Constitutionality of § 1971 under the Construction Contended for by the Government Which Can and Should Be Avoided in the Present Action.

A.

Congress Cannot Invade the Judicial Power by Requiring Courts to Accept an Irrational Presumption.

Section 1971 (c) undertakes to *deem* a criminal and unconstitutional act by a usurping individual to be the act of a sovereign State. It is on the strength of this legislative fiat that the Attorney General contends he is authorized to bring suit against the State and thus secure *"statewide relief, not confined to the counties whose registrars are joined"* (Brief for the U.S., p. 64). As an equal coordinate branch of the Federal government, this Court will not permit Congress to blind the courts to the proper exercise of their judicial power by any such irrational legislative pronouncement.[37]

This pronouncement proposes to make an act and deed of the State out of what was not its act or deed. It purports to give a null, void act or deed a modicum of temporary validity then simultaneously visit the act or deed upon a sovereign State, then hold the State to have acted illegally and contrary to the Constitution. A more positive non-sequitur is inconceivable.

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37. *Tot* v. *United States*, 319 U.S. 463, 468; *Bailey* v. *Alabama*, 219 U.S. 219, 238; and *Mobile, J. & K. C. Railroad Co.* v. *Turnipseed*, 219 U.S. 35, 43; cf. *Western & A. Railroad Co.* v. *Henderson*, 279 U.S. 639, 642-644.

The irrationality of the presumption is further shown by the fact that the statute seeks to impute *only the wrongful acts* of voting officials to the State. This is unreason run riot. If this presumption is rational, then two plus two may be *deemed* five and thirty Sundays *deem* a month. The statute has the double vice of making this irrational presumption *conclusive and irrebuttable.*

Suppose, *arguendo,* that the State could be made a co-defendant with a registrar in an action brought under the statute. In defense of the suit, the registrar could at least attempt to prove rightful, lawful and non-discriminatory action. But if this irrational presumption is given the full force and effect provided, the defendant State could not avail itself of any such lawful and proper acts of the registrar in its defense.

In *Manley* v. *Georgia,*[38] the Court summarized the law as to permissible legislative presumptions in this manner:

> "If the presumption is not unreasonable, and is not made conclusive of the rights of the person against whom raised, it does not constitute a denial of due process of law. . . . A statute creating a presumption that is arbitrary or that operates to deny a fair opportunity to repel it violates the due process clause of the 14th Amendment. . . . Mere legislative fiat may not take the place of fact in the determination of issues involving life, liberty or property."

The case most squarely in point with the present case is *Heiner* v. *Donnan.*[39] Under consideration there was § 302 (c) of the Revenue Act of 1926, 44 *Stat. at L.* 9, 70, which provided in pertinent part that a transfer of property made

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38. 279 U.S. 1, 9.

39. 285 U.S. 312, 328-329.

by a decedent within two years prior to death shall "be *deemed* and held to have been made in contemplation of death within the meaning of this title." The Court found that this statute attempted to create an irrebuttable presumption, and for that reason was unconstitutional. The pertinent reasoning appears in the following language:

> "The government makes the point that the conclusive presumption created by the statute is a rule of substantive law, and, regarded as such, should be upheld; and decisions tending to support that view are cited. The earlier revenue acts created a prima facie presumption, which was made irrebuttable by the later act of 1926. A rebuttable presumption clearly is a rule of evidence which has the effect of shifting the burden of proof, Mobile, J. & K. C. R. Co. v. Turnipseed, 219 U.S. 35, 43, 55 L. Ed. 78, 80, 32 L.R.A. (N.S.) 226, 31 S. Ct. 136, Ann. Cas. 1912A, 463, 2 N.C.C.A. 243; and it is hard to see how a statutory rebuttable presumption is turned from a rule of evidence into a rule of substantive law as the result of a later statute making it conclusive. In both cases it is a substitute for proof; in the one open to challenge and disproof, and in the other conclusive. However, whether the latter presumption be treated as a rule of evidence or of substantive law, it constitutes an attempt, by legislative fiat, to enact into existence a fact which here does not and cannot be made to, exist in actuality, and the result is the same, unless we are ready to overrule the Schlesinger Case,[40] as we are not; for that case dealt with a conclusive presumption and the court held it invalid without regard to the question of its technical characterization. This court has held more than once that a statute creating a presumption which operates to deny a fair opportunity to rebut it violates the due process clause of the 14th Amendment."

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40. *Schlesinger* v. *Wisconsin*, 270 U.S. 230.

This legislative deeming process is diametrically contrary to this Court's holding in *Mine Safety Appliances Co.* v. *Forrestal*, 326 U.S. 371, 373-374, which was a suit to enjoin the Under Secretary of the Navy and the United States not to withhold certain payments. It alleged that the act under which the action was threatened was unconstitutional on many grounds. A three-judge district court dismissed the United States because of its sovereign immunity. On appeal to this court the holding, in pertinent part, was this:

> "Appellant contends that the action seeks to prevent a tort by the Secretary, acting as an individual and not as an officer of the government, consisting of a trespass against appellant's property, and that equitable relief is necessary because appellant has no adequate remedy at law and since it would otherwise suffer irreparable loss. Under our former decisions, had the factual allegations supported these contentions, the complaint, as filed would, in the absence of any further proceedings, have provided a basis for the equitable relief sought. See e.g., Philadelphia Company v. Stimson, 223 U.S. 605, 619-620, 32 S. Ct. 340, 344, 56 L. Ed. 570. For according to these cases, if we assume, as we must for the purpose of disposing of the jurisdictional issue, that appellant's allegations including the one that the Renegotiation Act is unconstitutional are true, the fact that the Secretary had acted pursuant to the command of that statute would have made no difference. These cases hold that *a public officer can not justify a trespass against a person's property by invoking the command of an unconstitutional statute. Under such circumstances, the tort becomes the officer's individual responsibility, and the government is not held to have sufficient interest in the controversy to be considered an indispensable party.*"

It is the contention of the Attorney General in the case at bar that he should be allowed to institute a suit

against the State of Mississippi because otherwise he cannot expediently obtain the relief which he feels is necessary. This Court laid just such a contention to rest in the *Heiner* case. In quoting from *Schlesinger* v. *Wisconsin*,[41] the Court said:

> ". . . 'The presumption and consequent taxation,' the court said (p. 240), 'are defended upon the theory that, exercising judgment and discretion, the legislature found them necessary in order to prevent evasion of inheritance taxes. That is to say, "A" may be required to submit to an exactment forbidden by the Constitution if this seems necessary in order to enable the State readily to collect lawful charges against "B". Rights guaranteed by the federal Constitution are not to be so lightly treated; *they are superior to this supposed necessity*. . . .' "[42]

The Court in *Heiner* then went on to say:

> "To sustain the validity of this irrebuttable presumption it is argued, with apparent conviction, that under the prima facie presumption originally in force there had been a loss of revenue, and decisions holding that particular gifts were not made in contemplation of death are cited. This is very near to saying that the individual, innocent of evasion, may be stripped of his constitutional rights in order to further a more thorough enforcement of the tax against the guilty, *a new and startling doctrine, condemned by its mere statement* and distinctly repudiated by this court in the Schlesinger's Case (270 U.S. p. 240, 70 L. Ed. 564, 43 A.L.R. 1224, 46 S. Ct. 260) and Hoeper's Case (284 U.S. p. 217, ante, 248, 52 S. Ct. 120), cases involving similar situations. Both emphatically declared that such rights were superior to this supposed necessity."[43]

See also *Spieser* v. *Randall*, 357 U.S. 513, 523-524.

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41. 270 U.S. 230.

42. 285 U.S. at 325.

43. 285 U.S. 328.

The supposed necessity must fall here also for all of these same reasons and for the more cogent demand of the observation of a proper demarcation between the national and State sovereignties.

Another debilitating effect of this attempted invasion of the judicial power would be to impute a crime to a State through the fiction of "deeming" into existence an agency relationship which cannot exist. Title 18, *U.S.C.*, § 242, makes it a criminal offense to wilfully subject any inhabitant of a state to deprivation of constitutional rights because of race or color. The same elements necessary to form the statutory crime must be present to constitute a basis for statutory relief under § 1971. The willful element in the crime is supplied by necessary construction, since the deprivation of constitutional right protected by section 1971 includes only intentional or purposeful acts.[44]

If an individual, be he a legislator, judge or executive official acting contrary to his duties defined by statute, can make a State guilty of a criminal violation of United States law, such an individual would be possessed of a power to subject a State to criminal punishment and thus to an obvious destruction of its sovereignty. If this could be true as to a State, it could also be true as to the United States or any organ or branch thereof, including this Court. No individual can possess such power over a public institution or a sovereign.[45]

B.

There Is No Such Thing As a Bad State.

Within their respective spheres of authority, the individual states are equally sovereign with the limited

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44. *Snowden* v. *Hughes*, 321 U.S. 1.

45. *Texas* v. *White*, 74 U.S. (7 Wall.) 700.

government of the United States. The sovereignty of each of these governmental divisions is derived from the people.

> "The powers exclusively given to the federal government," it was said in *Worcester* v. *State of Georgia*, 31 U.S. (6 Pet.) 515, 570, "are limitations upon the state authorities. But with the exception of these limitations, the states are supreme; and their sovereignty can be no more invaded by the action of the general government, than the action of the state governments can arrest or obstruct the course of the national power."

In the License Cases Mr. Justice McLean stated:

> "There may be a limitation on the exercise of sovereign powers, but that State is not sovereign which is subject to the will of another. This remark applies equally to the federal and State governments. The federal government is supreme within the scope of its delegated powers, and the *State governments are equally supreme* in the exercise of those powers not delegated by them nor inhibited to them. From this it is clear, that while these supreme functions are exercised by the federal and State governments, within their respective limitations, they can never come in conflict. And when a conflict occurs, the inquiry must necessarily be, which is the paramount law? And that must depend upon the supremacy of the power by which it was enacted. The federal government is supreme in the exercise of powers delegated to it, but beyond this its acts are unconstitutional and void. So the acts of the States are void when they do that which is inhibited to them, or exercise a power which they have exclusively delegated to the federal government."

In *White* v. *Hart*,[46] the Court expressed itself in these words:

> "The national Constitution was, as its preamble recites, ordained and established by the people of the

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46. 80 U.S. (13 Wall.) 646, 650.

United States. It created not a confederacy of states, but a government of individuals. It assumed that the government and the Union which it created, and the states which were incorporated into the Union, would be indestructible and perpetual; and as far as human means could accomplish such a work, it intended to make them so. The government of the nation and the government of the states are each alike absolute and independent of each other in their respective spheres of action, but the former is as much a part of *the government of the people of each state*, and as much entitled to their allegiance and obedience as their own local state governments—"the Constitution of the United States and the laws made in pursuance thereof," being in all cases where they apply, the supreme law of the land. For all the purposes of the national government, *the people of the United States* are an integral, and not a composite mass, and their unity and identity, in this view of the subject, are not affected by their segregation by state lines for the purposes of state government and local administration. Considered in this connection, the states are organisms for the performance of their appropriate functions in the vital system of the larger polity, of which, in this aspect of the subject, they form a part, and which would perish if they were all stricken from existence or ceased to perform their allotted work."

In *Kohl* v. *United States*,[47] the eminent domain power of the national Sovereign was affirmed but with this express reminder that it was based on equal sovereignty:

"In Ableman v. Booth, 21 How. 523, 16 L. Ed. 175, Chief Justice Taney described in plain language the complex nature of our government, and the existence of two distinct and separate sovereignties within the same territorial space, each of them restricted in its powers, and each, within its sphere of action prescribed by the Constitution of the United States, independent

47. 91 U.S. (1 Otto) 367, 372.

of the other. Neither is under the necessity of applying to the other for permission to exercise its lawful powers. Within its own sphere, it may employ all the agencies for exerting them which are appropriate or necessary and which are not forbidden by the law of its being."

In *Farrington* v. *Tennessee*, 95 U.S. 679, 685, this court said,

> "Yet every State has a sphere of action where the authority of the national government may not intrude. *Within that domain the State is as if the union were not.* Such are the checks and balances in our complicated but wise system of State and national policy."

> "The determination of the Framers Convention and the ratifying conventions to preserve complete and unimpaired state self-government in all matters not committed to the general government is one of the plainest facts which emerges from the history of their deliberations. And adherence to that determination is *incumbent equally* upon the federal government and the states. State powers can neither be appropriated on the one hand nor abdicated on the other." *Carter* v. *Carter Coal Co.*, 298 U.S. 238, 295.

The contention that the sovereignty of the United States is a greater sovereignty than the sovereignty of the individual states is a fundamental error made by most who are imbued with the erroneous concept that increscent national federalism is the panacea for all ills.

In the true concept of our Constitution, *it is the people who are supreme* and their will, as recorded in the Constitution, defines the sovereignty of each governmental unit. The Federal Attorney General, in his brief, quotes a statement from *Sanitary District of Chicago* v. *United States*,[48] that a proceeding by the United States to enforce

48. 266 U.S. 405, 425.

the Constitution against a municipal service corporation "is not a controversy between equals". The statement is as apt in that case as it would be if the legal contest were one in which an officer of the United States was sued by a State to enforce the provisions of the Constitution in an area where the state functioned as *parens patriae*. The statement is taken out of context and is erroneous, if it is interpreted to mean that the sovereignty of the United States is superior to the sovereignty of the separate States. The unequals referred to in the statement must be taken as in reference to the Constitution, which is the superior of both. All of the sovereignties created under that document are *equally sovereign* in the respective areas committed to them.

Within their ambits of authority, each sovereign has the right to insist on freedom from intrusion from the other; for, as to its constitutional prerogatives, the interests of each is paramount. This is not justified by any process of reasoning based on the theory that the king can do no wrong. Rather, it finds its support in a proper and rational application of the concept that the will of the people as expressed in the Constitution must be served. For example, the people chose to constitute a Senate for the United States composed according to political boundaries without regard to population—no Federal or State executive, legislative or judicial authority or combination of such authorities can modify that method of composition, not even by amending the Constitution. The sole power to coin money was vested in the Federal Congress—this decision belonged to the people. The people chose to repose the sole power to ratify amendments to the Constitution in the legislatures of the various States—no authority can gainsay their wisdom. The United States was given powers of wider geographical dimensions than those reserved for the States, and its func-

tions were essentially different, *but the protection of the sovereignty of the one is just as essential to the accomplishment of the expressed will of the people as is the protection of the sovereignty of the other.*[49]

This court is firmly committed to the proposition that the line of demarcation between State and Federal sovereignty must be meticulously regarded, for its disregard would be vitally unconstitutional.[50] This is just as true when the construction of the Civil Rights Act is involved.[51] The Civil Rights Act should not be used to so centralize power as to upset the federal system.[52]

Another principle which is just as firmly entrenched in the jurisprudence of this nation is that there is a significant legal difference between the individuals who collec-

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49. In his concurring remarks in *Martin* v. *Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 363, Mr. Justice Johnson reasoned:

> "On the one hand, the general government must cease to exist whenever it loses the power of protecting itself in the exercise of its constitutional powers. Force, which acts upon the physical powers of man, or judicial process, which addresses itself to his moral principles or his fears, are the only means to which governments can resort in the exercise of their authority. The former is happily unknown to the genius of our constitution, except as far as it shall be sanctioned by the latter; but let the latter be obstructed in its progress by an opposition which it cannot overcome or put by, and the resort must be to the former, or government is no more.
>
> "On the other hand, so firmly am I persuaded that *the American people can no longer enjoy the blessings of a free government, whenever the state sovereignties shall be prostrated at the feet of the general government*, nor the proud consciousness of equality and security, any longer than the independence of judicial power shall be maintained consecrated and intangible, that I could borrow the language of a celebrated orator, and exclaim: 'I rejoice that Virginia has resisted.' "

50. *Texas* v. *White*, *supra*; *United States* v. *Constantine*, 295 U.S. 287, 296.

51. *Screws* v. *United States*, 325 U.S. 91, 108.

52. *Collins* v. *Hardyman*, 341 U.S. 651.

tively compose the government of a State and the intangible entity of the State itself. While these individuals—be they voting registrars, sheriffs, legislators or judges—are capable of committing acts, under color of office, which are classified as "state action" within the proscription of the 14th or 15th amendments, they are utterly incapable of binding the sovereign State itself by exceeding their statutory prerogatives.

In *Ex parte Virginia*,[53] the Court was considering a case involving a judge of a Virginia county court wherein he was charged with violation of a federal criminal statute for excluding negroes from jury service because of their race. Judge Coles was refused a writ of habeas corpus. This Court affirmed the correctness of Congress' action in enacting the statute under which the judge was prosecuted in this language:

> "But the Constitutional Amendment was ordained for a purpose. It was to secure equal rights to all persons, and, to insure to all persons the enjoyment of such rights, power was given to Congress to enforce its provisions by appropriate legislation. *Such legislation must act upon persons, not upon the abstract thing denominated a State, but upon the persons who are the agents of the State in the denial of the rights which were intended to be secured.* Such is the Act of March 1, 1875, 18 Stat. at. L., 336, and we think it was fully authorized by the Constitution."

In *Poindexter* v. *Greenhow*,[54] this Court stated:

> "The state itself is an ideal person, intangible, invisible, and immutable. The government is an agent, and, within the sphere of the agency, a perfect representative; but outside of that it is a lawless usurpation.

53. 100 U.S. 339, 347.

54. 114 U.S. 270.

> . . . That which, therefore, is unlawful because made so by the supreme law, the Constitution of the United States, is not the word or deed of the State, but is the mere wrong and trespass of those individual persons who falsely speak and act in its name."

The brief of the Attorney General contends that this basic constitutional principle is inapplicable to the present case because, although this action concerns individual and personal rights[55] it proceeds in the name of the United States and is therefore unaffected by the 11th Amendment. Their brief characterizes the State as a "convenient collective" and as a mere "short-hand". They remind the Court that the minority opinion below denominated this great legal and constitutional principle as "11th Amendment dialectic". They further point to the case of *United States* v. *Louisiana*,[56] where the Court took the position that it was "[a] necessary fiction to *accommodate* the 11th Amendment . . .". Obviously the word "accommodate" is used there in the sense of adapting that amendment to the immediate purposes of the opinion.

The history of the adoption of the Eleventh Amendment to the Constitution of the United States clearly teaches its significance and meaning as a limitation on the exercise of the judicial power which the people desired. It is of equal strength and constitutional vitality with every provision of the 14th or 15th Amendments.

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55. See *Reynolds* v. *Sims*, 377 U.S. 533; *United States* v. *Bathgate*, 246 U.S. 220, 227, and *South* v. *Peters*, 339 U.S. 276, 280; Cf. *Hague, Mayor, et al.* v. *Committee for Industrial Organization*, 307 U.S. 496, and also Judge Brown's dissenting remarks (R. 1566): ". . . [The action as alleged in the complaint] is between all Negro adults and the State." This reasoning is the basis for his view that it is "fitting" that the United States be permitted to sue the State.

56. 225 F. Supp. 353, 357.

This Court should not cheapen its decisions and those of the other courts who have so long announced and adhered to this great constitutional principle. To characterize it as mere dialectic or short-hand is obviously to make it merely an ingenious or a sophisticated device to "accommodate" expediency and to knowingly commit a violation of the 11th Amendment. It would be ridiculous to suppose that the Court would permit its decisional authority to be turned off and on like a light merely to suit the convenience of litigants circumstanced differently.

The 11th Amendment was not asserted as a bar to this action by The State of Mississippi.[57] However, the very same meanings and principles of Constitutional Law which this Court has applied to permit suits by individuals against errant officials acting under color of law, must obviously control the determination in this case that no right of action exists against The State of Mississippi on account of such erroneous actions.

Nothing could be further from truth or precept than the rash assumption in the brief for the United States that because the United States is the nominal plaintiff "the State itself may be seen to have committed wrongs which require correction."[58] *There is no such thing as a bad*

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57. It is not beyond consideration however that the amendment could be a bar to the joinder of the State. The action filed is clearly one to enforce personal and individual rights of a class of private citizens. How can the assertion of rights that belong to various members of a class by someone not a member of the class operate to extend and amplify such rights beyond the extent of those rights as possessed by the members of the class themselves? *McCabe et al. v. Atchison, T. & S. F. Railway Co. et al.*, 235 U.S. 151.

58. p. 63. This statement is also completely inconsistent with the following statement on page 61 of the same brief: "Under Section 601(b), the State is sued *only because* the responsible officials are unknown or may withdraw and lose their identities."

State, just as there is no such thing as a bad court or a bad office. Evil, froward men may secure positions of public trust and may misuse the offices which they secure. Their usurpations and excesses are none the less personal even where, under color of their office, the majesty and power of the sovereign they serve is necessary to enable them to bring their corruption to fruition. They cannot despoil the State, the Court or their office. Whether they are removed or their actions are corrected, the sovereignty they serve must and does continue completely unimpaired. Neither sententious prose nor catchy alliteration can subvert established constitutional principles.

C.

The Court Will Not Anticipate a Question of Constitutional Law in Advance of the Necessity of Deciding It.

Precedents teach, without exception, that this Court will not adjudicate the constitutionality or unconstitutionality of any State or Federal enactment until it is *necessary* to determine such a constitutional question. The authorities in support of this proposition were recently collected in the case of *United States* v. *Raines,* 362 U.S. 17. The court set forth these respected rules of practice:

> "'. . . never to anticipate a question of constitutional law in advance of the necessity of deciding it;
>
> "'never to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.';
>
> ". . . one to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional . . .;

> "The delicate power of pronouncing an Act of Congress unconstitutional is not to be exercised with reference to hypothetical cases;
>
> ". . . a litigant may only assert his own constitutional rights or immunities."

The reasoning supporting these rules was stated in these words:

> "The very foundation of the power of the federal courts to declare Acts of Congress unconstitutional lies in the power and duty of those courts to decide *cases and controversies* properly before them. . . . This Court, as is the case with all federal courts, 'has no jurisdiction to pronounce any statute, either of a state or of the United States, void, because irreconcilable with the constitution, except as it is called upon to adjudge the legal rights of litigants in *actual controversies*.
>
> ". . . a limiting construction could be given to the statute by the court responsible for its construction if an application of doubtful constitutionality were in fact *concretely presented*.
>
> ". . . application of this rule frees the Court not only from unnecessary pronouncement on constitutional issues, but also from *premature interpretations* of statutes in areas where their constitutional application might be cloudy."

None of the exceptions to the application of these rules is pertinent in considering the propriety of refusing to consider the constitutionality *vel non* of § 1971 as attempted to be applied to the State of Mississippi as a defendant here. The United States (and for that matter, the members of the class whose individual and personal rights are asserted) is not left without an effective remedy by the dismissal of the State. The enforcement officials—the

registrars—continue available as potential defendants in a proper proceeding for preventive relief. No relief could have been granted as to the State if it had not been dismissed.[59] The State is not about to leave the jurisdiction or otherwise become unamenable to suit if these other proper respondents were to disappear. If and when a situation arises in which registrars are not available for the relief which the statute authorizes, then and only then will the time be ripe to make such an adjudication.

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59. *United States* v. *Atkins, supra.*

CONCLUSION

The State of Mississippi is not a necessary party to the adjudication and decision of any question presented in this case. Its presence as a defendant raises substantial constitutional questions. While the presence of the State is in nowise necessary to the grant of effective relief, the resolution of the questions raised would require an abstract decision as to the constitutionality of 42 *U.S.C.* 1971. The State of Mississippi should have been dismissed. As to the State, the judgment of the District Court was correct and should be affirmed.

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No. 73.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964.

UNITED STATES OF AMERICA,
Appellant,

vs.

THE STATE OF MISSISSIPPI et al.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

BRIEF FOR THE MEMBERS OF THE STATE BOARD OF ELECTION COMMISSIONERS OF THE STATE OF MISSISSIPPI

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No. 73

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964.

UNITED STATES OF AMERICA,
Appellant,

vs.

THE STATE OF MISSISSIPPI et al.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

BRIEF FOR THE MEMBERS OF THE STATE BOARD OF ELECTION COMMISSIONERS OF THE STATE OF MISSISSIPPI

PRELIMINARY STATEMENT

This separate brief presents the clearly separable and distinct position of the members of the State Board of Election Commissioners. These appellees adopt the brief of the six appellees who were sued as registrars of voters as to the remaining points of argument raised on this appeal.

SUMMARY OF THE ARGUMENT

The members of the Mississippi Board of Election Commissioners were improperly joined as defendants in this action. The complaint makes no allegation that these officers took any *action* of any kind; obviously therefore no wrongdoing by them is alleged which would justify any part of the relief ostensibly sought against them. They cannot be enjoined to "register" anyone. The statutes of the State do not now give and have never given them such power. A fortiori, they have not failed or refused to register any person because of race or color or on any other basis.

A comparison between the statute which sets out the explicit requirements for constituting the sworn written application form for registration and the form itself, discloses the completely ministerial and perfunctory nature of the acts which these defendants perform.

We submit that these board members must have been made defendants in an attempt to use them as a *joinder device* to circumvent the spirit and letter of the authority given to the Attorney General in § 1971 to bring separate actions in separate governmental subdivisions.

A principal basis of the government's argument that these members were proper defendants is in error. *This Board does not have the power to remove a registrar.* It is not even free to appoint who it may choose.

The Board members had no interest which would have been affected by any decree that could have been made. Complete relief did not demand their presence. This action was framed as one against officials who served as registrars and not against this Board.

ARGUMENT

The Lower Court Was Correct in Dismissing This Action As to the Members of the Mississippi Board of Election Commissioners

Every allegation of the complaint which related to these officials is set out in the margin.[1]

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1. Ross R. Barnett, Joe T. Patterson and Heber A. Ladner are members of the Mississippi State Board of Election Commissioners by virtue of their official positions as Governor, Attorney General and Secretary of State, respectively. The State Board of Election Commissioners is an agency of the defendant State of Mississippi. The offices of said defendants are in the state capitol, Jackson, Mississippi. (R. 1) Registrars of voters in Mississippi, including the defendant registrars are agents of the Mississippi State Board of Election Commissioners (R. 2). [Note: This conclusion of law is clearly negated by the statutes of the State which define the connection between these separate officials. See Mississippi Code of 1942, §§ 3204 and 3206 in the Appendix to this Brief.] . . . the State Board of Election Commissioners was directed to prepare a sworn written application form (which included the interpretation test and the duties and obligations test) (R. 6) . . . the Mississippi Legislature amended Section 3209.6 of the Mississippi Code to require that the defendant State Board of Election Commissioners in preparing the application forms to be used by the county registrars should include therein spaces for information showing the good moral character of the applicant in order that the applicant may demonstrate to the county registrar that he is a person of good moral character. (R. 11) . . . In 1955, the Mississippi Legislature passed a statute requiring the defendant State Board of Election Commissioners to prepare a series of registration application forms suitable for obtaining pertinent information with respect to the applicant's qualifications, including spaces to test the applicant's ability to read and write any section of the Constitution of the State of Mississippi and give a reasonable interpretation thereof, and a space for the applicant to demonstrate to the county registrar a reasonable understanding of the duties and obligations

It can readily be seen from these allegations that these Board members were not alleged to have engaged in any *action* at all, let alone action which would have justified the granting of any relief against them. The complaint did not even allege that they performed the duty imposed on them by the statute, much less that they performed this duty improperly or wrongfully. The complaint was utterly devoid of any pretense of a claim that the State Board of Election Commissioners combined or conspired with any other defendant in the action to register or refuse registration to any applicant.

An examination of the complaint with a view to the relief sought reinforces the validity of the Court's dismissal of these parties. They were not proper or necessary parties to a suit seeking a declaration of unconstitutionality: (a) As to §§ 244 and 241-A of the Constitution of Mississippi and all statutes implementing these sections[2]—because they did not enforce a single one of such sections or statutes and because whatever duties they impliedly had, have obviously been long ago performed; (b) As to the four House bills 822, 900, 903, and 904 enacted at the 1962 session of the legislature[3]—because not one of these bills relates to the members of this Board; (c) As to the provisions of § 3209.6 of the Mississippi Code providing for destruction of application forms[4]—because no member of this Board is or ever has been the custodian of any such

---

of citizenship under a constitutional form of government. (Sec. 3209.6, Miss. Code.) (R. 13). . . . This statute (House Bill 905) amended Section 3209.6 to require the defendant State Board of Election Commissioners to make provision on the application form for the applicant to demonstrate good moral character . . . (R. 17).

2. Prayer, Paragraphs 1 and 2 (R. 22).

3. Prayer, Paragraph 3 (R. 22).

4. Prayer, Paragraph 4 (R. 22)

records, nor were such members charged with having caused, or threatened to cause, the destruction of such records.[5]

They were not proper or necessary parties to a suit seeking a finding of a pattern and practice by the defendant County registrars of racial discrimination in registering electors[6] or to a suit seeking the issuance of a preliminary injunction prohibiting five classes of action concerned with the registration of electors[7] because they don't function as registrars. They were not proper or necessary parties to a suit for an injunction to require defendants to register Negro applicants possessing designated qualifications,[8] because no relief could have been granted as against these board members or any officer who was not even vested with authority to register or deny registration to anyone.

Since these defendants at all times have lacked the authority to register any applicants, it is all the more obvious that they never could have been guilty of failing or refusing to register any otherwise qualified person on the basis of race, color or any other criteria.

Despite the absence of any alleged wrongdoing on the part of these defendants in the Complaint, the *brief* for the United States suggests that a future wrong might arise in connection with the preparation of application forms to be used by County Registrars. Even the most cursory comparison between the pertinent statute[9] and the appli-

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5. The allegations of the Complaint bear this out. Cf. Paragraph 59 of the Complaint (R. 14).

6. Prayer, Paragraph 5 (R. 22).

7. Prayer, Paragraph 6 (R. 22, 23).

8. Prayer, Paragraph 7 (R. 23).

9. § 3209.6

cation form[10] discloses that the form prepared was simply a recast of the statute, no more—no less. Such a comparison makes it transparent that these officials are, precisely as the majority opinion below described them, mere conduits through which a completely ministerial and perfunctory function of the State's registration process flows to the registration officials.[11]

These Board members are not charged with any wrongful act or omission. Every valid presumption is that they have done and will do their duty as required by statute.[12]

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10. See Appendix B to the Brief for the United States, pp. 116-120.

11. Compare the position of these Board members with the pipe line companies in the case of *Commonwealth of Pennsylvania* v. *West Virginia (Ohio* v. *Same)*, 262 U.S. 553, rehearing granted 263 U.S. 671, affirmed on rehearing without modification 263 U.S. 350. There, in a suit contesting the enforcement of a West Virginia statute regulating the amount of gas which could be transported out of the state by private pipe line corporations, the Court held the pipe line companies were not requisite parties, even though they owned and operated the pipe lines which transported the gas which was the subject of the controversy. Obviously this holding was predicated upon a presumption of continued correct and lawful conduct on the part of these private concerns, as well as upon the basis that the real controversy was with others. The precise holding was in this language:

> "The third question is whether the requisite parties have been brought into the suits. It is objected that the pipe line companies have not been brought in. But there is nothing which makes their presence essential. The complainant states make no complaint and seek no relief against them. They are supplying gas in those states, and evidently will continue to do so, if not restrained or prevented by the defendant state. It is only with her that the complainant states are in controversy."

12. In *Watson et al.* v. *Buck et al.*, 313 U.S. 387, 400, the Court held that even a statement by the Attorney General of a state whose laws were attacked as unconstitutional that he stood ready to do his duty to enforce the law would not overcome the presumption of even, fair and lawful conduct on the part of such officer so as to warrant an injunction against him. The Court said:

In trying to reason why these Board members were ever named as defendants, without any proof of wrong or any right to relief alleged, or known to exist, one is only left with the conclusion that these Board members were made defendants in the hope that they might serve as a *joinder device* to enable the Department of Justice to bring together, in one action, all of the various County Registrars they wished to join originally or later without venue or jurisdictional deficits. Now, by the government's brief, the parties are advised that the Attorney General desired to remake the dismissed proceeding into one seeking a combined pattern and practice finding extending throughout eighty-two voting subdivisions or areas of the state.[13]

42 USC, § 1971 is the only source of authority which the Department of Justice might have had for an even colorable claim to bring this action. Its plain words show it was enacted to permit suits against offending registration officials. It could not support the six-faceted action filed. It certainly could not be stretched to any such lengths as now envisioned. The legislative history of § 1971 reinforces this obvious facial aspect of the statute, particularly with regard to the amendment inserted to assure Congress that each separate registrar would have his or her "day in court" and would not be a victim of guilt through association or be roped into a suit where his office would be governed on the basis of what some other separate official did or omitted doing.

"A general statement that an officer stands ready to perform his duty falls far short of such a threat as would warrant the intervention of equity. And this is especially true where there is a complete absence of any showing of a definite and expressed intent to enforce particular clauses of a broad, comprehensive and multi-provisioned statute."

13 Brief for the United States, p. 64

A principal foundation for the government's assertion that these members were proper defendants is based upon an erroneous interpretation of the applicable law. Section 3204 of the Mississippi Code of 1942 makes it mandatory that the Board of Election Commissioners appoint the Clerk of the Circuit Court to be the registrar of each county in the State, unless he is affirmatively shown to be an improper person. Section 3206 of that Code makes it transparent that *once a registrar is appointed, there is no authority whatsoever in the State Board of Election Commissioners to remove him from office, whether he is an "improper person" or not.*[14]

The government's brief is likewise in error when it represents that the registration application form was a principal issue in this case. This representation must have been an afterthought, for the registration form was not attached to the complaint and it was not in the record before the court below. It only appears here as an appendix to the Brief for the United States.

If the complaint had shown an entitlement to any relief against any one or more of the registrar defendants, it would have had no meaningful effect for the court to also add on an injunction against the members of the State Board of Election Commissioners. In the absence of any charge of wrongdoing by these defendants, no court of equity would have been warranted in enjoining them because they might create, in the words of the government's brief, "a possible conflict" with the court order by making some undefined sort of directives contrary to it. If, after an order had been entered in a proper suit, it were to be shown that some or all of the mem-

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14. Since the government did not include § 3204 or § 3206 in the appendix to their brief, they are appended hereto.

bers of the State Board of Election Commissioners had in any way contrived or attempted to interfere with the orders of the court, then and only then would it be legal or appropriate to add them as defendants against whom relief would be granted, or to bring some proper action against them to obviate the interference. The equitable maximum permitting full relief does not permit the naming of just any persons as defendants, nor does it encompass the granting of relief without a prerequisite showing that a party has committed or threatens to commit a wrongful act that will result in irreparable injury.

Injunctions should not be granted merely because no demonstrable harm will result to the defendants by their issuance or to establish that past wrongs may have occurred. *Donnelly Garment Co.* v. *Dubinsky,* D.C., 55 F. Supp. 587, 603; *General Electric Co.* v. *Gojack,* 68 F. Supp. 686.

Rule 19, Federal Rules of Civil Procedure makes parties having "a joint interest" indispensable parties. The oft cited case of *Shields* v. *Barrow,* 58 U.S. (17 How.) 130, 136, gave the classic definition of an indispensable party in these words:

> "Persons who not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience."

Certainly these Board Members were not indispensable parties under the test required by *Williams et al.* v. *Fanning,* 332 U.S. 490. The decree prayed for did not require these defendants to do a single thing. The entire relief sought related only to the persons who enforce and execute the registration laws.

A recognized general text defines the rule as to proper parties in an equity action in this way:

> "All persons whose interest will *necessarily* be affected by the decree or without whose presence a complete settlement of the questions involved in the action could not be attained are properly joined as defendants.[15]

Mr. Justice Johnson epitomized the answer in *Kerr et al.* v. *Watts*, 19 U.S. (6 Wheat.) 550, 559, in these words:

> "No one need be made a party complainant in whom there exists no interest, and no one party defendant from whom nothing is demanded."

This, exactly, is the position of the members of the State Board of Election Commissioners. It was the registrar, who is the only official with statutory authority to *enforce* and to *register*, to whom this action was addressed by allegation and by prayer.

No authority has been cited by the Department of Justice which overcomes the authority and logic of the decision in *Federal Trade Commission* v. *Claire Furnace Company*, 274 U.S. 160, 173, 174, in which the court approved the dismissal of the Federal Trade Commission as a party-defendant to an injunction suit with the following reasoning:

> "There was nothing which the commission could have done to secure enforcement of the challenged orders except to request the Attorney General to institute proceedings for a mandamus or supply him with the necessary facts for an action to enforce the incurred forfeitures. If, exercising his discretion, he had instituted either proceeding the defendant therein would have been fully heard and could have ade-

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15. 43 C.J.S., 822, Injunctions, § 175.

quately and effectively presented every ground of objection sought to be presented now. Consequently, the trial court should have refused to entertain the bill in equity for an injunction."

In *Fitts* v. *McGhee*, 172 U.S. 516, this court used this apposite language:

> "It is to be observed that neither the attorney general of Alabama nor the solicitor of the Eleventh judicial circuit of the state appear to have been charged by law with any special duty in connection with the act of February 9, 1895. . . . In the present case, as we have said, neither of the state officers named held any special relation to the particular statute alleged to be unconstitutional. *They were not expressly directed to see to its enforcement.* If, because they were law officers of the state, a case could be made for the purpose of testing the constitutionality of the statute, by an injunction suit brought against them, then the constitutionality of every act passed by the legislature could be tested by a suit against the governor and the attorney general, based upon the theory that the former, as the executive of the state, was, in a general sense, charged with the execution of all its laws, and the latter, as attorney general, might represent the state in litigation involving the enforcement of its statutes. That would be a very convenient way for obtaining a speedy judicial determination of questions of constitutional law which may be raised by individuals, but it is a mode which cannot be applied to the states of the Union consistently with the fundamental principle that they cannot, without their assent, be brought into any court at the suit of private persons."

In *Kresge Co.* v. *Ottinger*, (S.D., N.Y.) 29 F.2d 762, a three-judge district court in an opinion by Circuit Judge A. N. Hand, approved the dismissal of a New York District Attorney and the Board of Optometry in a statutory injunction suit because they were not charged with the en-

forcement of the act involved. Another three-judge district court in *Massachusetts Farmers Defense Committee* v. *U. S. et al.*, (D., Mass.) 26 F. Supp. 941, summed up the law and the authorities thus:

> "It is well settled that where a statute or regulation is challenged as being unlawful or unconstitutional, an injunction will lie *only* against the person or agency who is charged with the enforcement of the statute or regulation. Federal Trade Commission v. Claire Furnace Co., 274 U.S. 160, 47 S. Ct. 553, 71 L. Ed. 978; Grand Trunk Railroad Company v. Curry, C.C., 162 Fed. 978. Gnerich v. Rutter, 265 U.S. 388, 44 S. Ct. 532, 68 L. Ed. 1068; National Conference on Legalizing Lotteries, Inc., v. Goldman, 2 Cir., 85 F.2d 66; Raichle v. Federal Reserve Bank of New York, 2 Cir., 34 F.2d 910; Alcohol Warehouse Corporation v. Canfield, 2 Cir., 11 F.2d 214. See, also, Webster v. Fall, 266 U.S. 507, 45 S. Ct. 148, 69 L. Ed. 411."

In the Kentucky case of *Stiglitz, County Clerk,* v. *Schardien (Reager* v. *Stiglitz, County Clerk; Blair* v. *Lewis, Secretary of State, et al.)*, 239 Ky. 799, 40 S.W.2d 315, 321, the state court of appeals in a legislative reapportionment suit attacking constitutionality of a statute and praying for injunctive relief, said:

> "We are constrained to the conclusion that the circuit court was correct in the disposition made of the case of Blair v. Lewis and others. Conceding that the plaintiff had a right to maintain the suit, it was nevertheless necessary for him to sue some one *who had some duty to perform respecting the enforcement and practical operation* of chapters 147 and 148 of the Acts of 1930. Neither the Secretary of State nor the state board of election commissioners had any such duty to perform. Axton v. Goodman, 205 Ky. 382, 265 S.W. 806. The Attorney General had published the Acts of 1930 months before the suit was filed and his

duty had been discharged. Revis v. Daugherty, Attorney General, 215 Ky. 823, 287 S.W. 28. The duties of the Secretary of State would be the same under the acts of 19[illegible] and the acts of 1930, and there was no basis for an injunction against that officer. Blair failed to manifest to the court how any relief could be granted against any of the defendants to his suit; hence its dismissal on demurrer was proper."

If these Board members can be made nominal or "non-defendant" defendants because they supervised the making of a form could the printing company that printed it be similarly included?—The suppliers of the ink?

Cases Distinguished

On page 66 of the brief for the United States, the appellant cites four cases in support of its position that the election commissioners were properly joined as defendants. A short analysis of these cases shows them to be inapposite to the situation of the State Election Commissioners.

In *Bevins* v. *Prindable*, 39 F. Supp. 708, a three-judge district court ruled that the Governor and Attorney General were proper parties to such a proceeding in view of the requirement of the statute (now 28 *U.S.C.A.* 2284 (2)) providing that notice of the suit must be delivered to them.[16]

16. The Court relied upon *Arneson* v. *Denny*, (S.D. Wash.) 25 F.2d 993. There District Judge Cushman, writing for a three-judge district court, did use the words "Neither the Governor nor Attorney General is named in the complaint as a party defendant, yet the statute, at least in so far as the application for an interlocutory injunction is concerned, makes both the Governor and the Attorney General indispensable parties, and there must be reasonable notice to both before a determination pursuant to the statute be had on such application," but a study of his opinion indicates he ruled only that it was indispensable that they receive the same *notice* a party would receive. On the same day the same court rendered a decision on the merits in the case. (See 25 F.2d 988.) Other

The court went on to state:

> "Since these defendants are not charged with having actually done or threatened to do anything of which plaintiffs complain, the term 'defendants' when used hereafter will refer to the other defendants only."

This ruling was purely dicta, inasmuch as the court went on to refuse to issue the interlocutory injunction prayed for. Actually the Governor and the Attorney General were not in any position to have appealed from the court's ruling retaining them as "defendants" if they had wanted to, because the court, in the same holding, denied the plaintiff any relief against them. On appeal to this court, a motion to affirm was made and ruled on in the following language (314 U.S. 537):

> "The motion to affirm is granted and the judgment is affirmed." Citing *Beal v. Missouri*, 312 U.S. 45, 49-51; and *Watson v. Buck*, 313 U.S. 387, 400, 401.

The point as to the joinder of these parties who the court could not even bring itself to call defendants, passed *sub silentio* in this court's ruling. The real thrust of the case and the principle which this court affirmed, has a very pertinent bearing on the merits of the present appeal as to other appellees. It is discussed in the brief of the various registrar defendants.

The next case cited was *Orleans Parish School Board v. Bush*, 286 F.2d 78. In this case the 5th Circuit refused to dismiss the Orleans Parish School Board as a defendant. The court ruled that the contention of the School Board that an act of the Legislature had relieved them of their duties was an erroneous contention. They specifically

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special courts have dismissed similar actions against these same officials. *Comacho v. Rogers*, (S.D., N.Y.) 199 F. Supp. 155.

found that under such act "the operation of the Orleans Parish schools is still *confided* to the appellant board, . . .". On petition for rehearing the court stated that no conceivable construction of the State statute could affect their determination that this defendant was "*the* agency engaged in the operation . . ." against which the injunction order ran. Certainly the School Board, so situated, was a proper defendant, indeed, it was an indispensable defendant. This case contains an excellent discussion of the proper approach to the application of the doctrine of abstention and will also be further discussed in the brief of the Registrars.

The next case was *James et al.* v. *Almond et al.*, 170 F Supp. 331. There the district court without citation of authority, retained the Attorney General of the State as a defendant in an injunction action because he had a general duty to enforce the law.[17] Although the citation by the appellant shows "appeal dismissed 359 U.S. 1006", their brief does not advise the court that such dismissal was pursuant to *stipulation of the parties* and, therefore, does not reflect any ruling by this court on this point.

The last case cited is *Evans et al.* v. *Members of the State Board of Education*, 149 F.Supp. 376. In that case a statewide Board of Education had specific authority to operate schools. It delegated a portion of its authority to a local Board of Education by requiring it to submit a plan for desegregation. The court held that both parties so situated were proper defendants. This holding, however, sheds no light on the government's claim of a right to maintain this suit against the State Board of Election Commissioners, who are parties against whom no charge of any

17. Cf. *Watson* v. *Buck*, 313 U.S. 378, 400.

action whatsoever is made and against whom no relief could be granted. Incidentally the Court of Appeals in its opinion, 256 F.2d 688, 694, adhered to the well established rule against presuming wrongdoing on the part of public officials in these words:

> "We reiterate that we will not assume that the members of the local school boards, also named as defendants in the instant litigations, will not adhere to rules and regulations of the State Board of Education as to the non-discriminatory racial practices if such rules and regulations are created and promulgated by the State Board of Education."

CONCLUSION

Not one single valid countervailing argument has been advanced why the reasoning of the court below as to these defendants was not completely sound and their dismissal should not be affirmed. The court stated:

> "We have examined the Complaint in detail without finding any fact allegation that these Commissioner Defendants did in any way enforce any of the statutes under attack, nor is any fact allegation made that their actions enforced a denial of registration to any otherwise qualified applicant because of the race or color of the applicant or for any other reason.
>
> No choice is given to the State Election Commission in the selection of County Registrars, that duty arising only in the extreme situation where they have reached the determination that the duly elected Circuit Clerk is an "improper" person. They have no control over the tenure or actions of the Circuit Clerk as Registrar once they have appointed him as required. They are rigidly regulated as to the type of registration forms they must prepare. The statutes make it plain that they are mere conduits through whom a minor part of the

registration process is required by statute to flow. The State Election Commissioners are not charged in the Complaint with promulgating any form or with appointing any Registrar otherwise than in accordance with their duties under the statutes relied upon by plaintiff. These statutes are not under attack in this case. Considering the Complaint and any set of circumstances which could be proved under its allegations, we cannot visualize how an injunction could issue against the State Board of Election Commissioners or any of its members individually, for they are not charged with enforcing or threatening to enforce any of the statutes under attack. The presence of the State Election Commissioners as parties-defendant in this litigation nevertheless presents the rights of three additional defendants which must be recognized by way of pleadings, discovery procedures, objections to evidence, cross-examination of witnesses, presentation of evidence, and the many other trial procedures which, while time-consuming, are the due of every litigant under our system of judicial procedure.

Three-judge courts constitute a unique burden on the Federal Judiciary. To keep this burden to a minimum, the statutes vesting the right to call such courts to sit in judgment of constitutional challenges are to be strictly construed as a procedural technicality and not as a broad remedial social policy. See *Phillips* v. *United States*, 312 U.S. 246; *Stainback* v. *Mo Hock Ke Lok Po*, 336 U.S. 368; and *Kesler* v. *Dept. of Public Safety*, 369 U.S. 153.

Where, as here, parties are brought before such a tribunal who are not at all within the contemplation of the statutes attacked and who are not indispensable, necessary or proper parties to the determination of the issues in controversy, they should be dismissed in the interests of sound judicial administration as well as to

spare the litigants themselves the expense and inconvenience of a trial procedure. (R. 1533, 1534).

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APPENDIX

Mississippi Code of 1942

§ 3204. Board of election commissioners and registrar.

There shall be a state board of election commissioners, to consist of the governor, the secretary of state, and the attorney-general, any two of whom may perform the duties required of the board; a board of election commissioners in each county, to consist of three discreet persons who are freeholders and electors in the county in which they are to act, and who shall not all be of the same political party, if such men of different political parties can be conveniently had in the county; and a registrar in each county who shall be the clerk of the circuit court, unless he shall be shown to be an improper person, to register the names of the electors therein.

§ 3206. Appointment of registrars.

The state board of election commissioners, on or before the fifteenth day of February succeeding each general election, shall appoint in the several counties registrars of elections, who shall hold office for four years and until their successors shall be duly qualified. And the registrar is empowered to appoint a deputy registrar, with the consent of the board of election commissioners, who may discharge the duties of the registrar.

[redacted]

[redacted]

[redacted]

[redacted]

No. 73

UNITED STATES OF AMERICA,
Appellant,

vs.

THE STATE OF MISSISSIPPI ET AL.,
Appellees.

APPEAL BY UNITED STATES FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

[redacted]

T. J. [redacted],
Jos G. Gunton,
Adams County,
Jos T. [redacted],
Claiborne County,
[redacted],
[redacted],
[redacted],
Coahoma County,
[redacted],
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November, 1964.

R. L. Mercer Hall, Inc., 1108 Oak Street, Kansas City, Mo. 64106, HArrison 1-3080

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964.

No. 73

UNITED STATES OF AMERICA,
Appellant,

vs.

THE STATE OF MISSISSIPPI ET AL.,
Appellees.

APPEAL BY UNITED STATES FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

BRIEF OF APPELLEES, H. K. WHITTINGTON, Circuit Clerk and Registrar of Amite County; MRS. PAULINE EASLEY, Circuit Clerk and Registrar of Claiborne County; J. W. SMITH, Circuit Clerk and Registrar of Coahoma County; MRS. MARTHA TURNER LAMB, Circuit Clerk and Registrar of Leflore County; T. E. WIGGINS, Circuit Clerk and Registrar of Lowndes County; WENDELL R. HOLMES, Circuit Clerk and Registrar of Pike County

INTRODUCTORY STATEMENT

This suit was described by the dissent below as "a massive assault" on the basic process of State voter qualification. We agree. Viewed realistically, it sought to make over for the State its entire processes of elector quali-

fication in an image to the liking of those who caused the suit to be brought. It attempted to combine into one "super action" eighty-two separate actions seeking eighty-two separate adjudications that patterns and practices of racial discrimination existed in the separate counties of the State of Mississippi. This was accomplished under the claim of an attack on statutory constitutionality. This appeal cannot succeed if the court understands the full extent of the claim which was asserted and the relief which was sought, then assays the claim and relief in the light of basic constitutional tenets and limitations.

The complaint claimed that two sections of the Mississippi Constitution and several statutes fixing qualifications of electors of the State of Mississippi violated the United States Constitution. The relief prayed was a judgment declaring the State's constitutional sections and statutes invalid, and an injunction order was prayed requiring that five criteria, selected by the Department of Justice, be used as the sole basis for qualification of *Negro* voters in Mississippi. The injunction was not only sought against six arbitrarily selected, completely unrelated county registrars, but also against the members of the State Board of Election Commissioners, and the State itself.[1]

The only arguable bases for the declaratory judgment relief sought were (a) § 1971—the statute passed by Congress under its power to enforce the prohibition of the 15th Amendment—as to the constitutional provisions and all but two of the statutes, and (b) the supremacy clause[2] as to the other two statutes (i) requiring completion of applications, and (ii) *permitting* destruction of records. Neither

1. Both of the latter have filed separate briefs.

2. Article VI, Clause 2.

of these bases sustained the complaint filed by the federal Attorney General.

The 15th Amendment *prohibits* discrimination. *It is a veto not a vote.* It does not affirmatively fix any State's qualifications of its electors. The power given to Congress by the second paragraph of the 15th Amendment is the power to enforce a prohibition. This power was exercised by Congress in Subsection (c) of § 1971 in the limited term *"preventive"*. Whether the people ought to have cabined this amendment to their Constitution as a proscription only or whether Congress ought to have so confined the authority granted to the United States in § 1971 are not *judicial* questions.

SUMMARY OF THE ARGUMENT

The complaint contained no allegations of joint action by the six registrars nor did it contain any charge of a combination or conspiracy. Because of the very nature of the reasons alleged, it would have been impossible for the defendants to have acted jointly as to any applicant for registration since, by statute, each defendant is charged with a duty which can only be discharged by him or her within the confines of a single county; and every applicant for registration has only one registrar to whom application can be made. The dismissal of the complaint as to four of the registrar defendants was compelled by lack of venue. Three of these defendants were sued outside of the judicial district in which they resided and one defendant was sued outside of the division of the district of her residence. The court exercised its discretion to dismiss a fifth registrar for misjoinder.

This action was an attempt to collect eighty-two separate pattern and practice suits into a single action

under the aegis of testing constitutionality. If it had been allowed to be maintained in the form the Attorney General now claims to want, it would have had the obvious effect of denying eighty-one registrars their day in court by attributing the actions of other registrars to them. Just as no State registration official can despoil a State's valid laws, so no one of them may by wrongful actions infuse correct actions of others with an element of wrongdoing.

The wide discretion vested in the trial court to drop parties was not abused in dismissing this action as to the registrars sued out of the division and districts of their residence and improperly joined.

42 *U.S.C.* 1971 was the sole basis for this complaint. The second paragraph of the 15th Amendment does not say, "The *Attorney General* shall have power to enforce this article." This power is vested in *Congress*. The Constitution thus makes it clear that there is no "inherent" standing exclusive of § 1971 which will support this action. Under that statute, Congress has only seen fit to give the Attorney General authority to institute "a civil action or other *proper* proceeding for *preventive* relief." The dismissed action did not seek preventive relief. It sought affirmative relief. Its principal prayer was for a declaration that State statutes, valid on their face and capable of constitutional application, were invalid because it was alleged they had been discriminatorily used in the past, and would be so used in the future. This concept is foreign to the nature of preventive relief. Such a concept is erroneous by any test. If an officer has misused a statute, preventive relief would consist of a prohibitory injunction against future misuse. To request a court to act affirmatively to destroy the statute instead of correcting the officer was like asking equity to burn down the barn to get rid of a rat.

Section 1971 operates *"to the contrary notwithstanding"* any State constitutional or statutory provisions. It does not invest the Attorney General with authority to attack such provisions. The Attorney General's assumption that this true meaning of § 1971 enfeebles the statute is erroneous. No unconstitutional activity is thus put beyond the statute's preventive reach, for no person whose actions or threats are attacked can justify unconstitutional conduct on the basis of State law. Prevention is available notwithstanding State law, if any official conduct contrary to § 1971(a) is proven. Regardless of the court's conception of the height of the aim or motive involved or of how basic the right protected might be, a statute is not susceptible of a judicial amendment which would alter the words Congress chose to use.

The complaint dismissed by the court below sought an abstract adjudication of the constitutionality of two constitutional and five statutory provisions of the State of Mississippi established to govern qualification of electors. Such an abstract attack lacks the essential quality of a case or controversy necessary to bring it within the ambit of the judicial power. Just as the court has no prerogative to legislate, so it cannot substitute its social beliefs for the judgment of legislative bodies who are elected to pass laws. These provisions have never received the required State construction to place upon them a fixed meaning which would permit this court to properly rule on their constitutionality.

The structure of the complaint also disregarded the plain requirement of § 1971(a) that it be invoked on behalf of persons shown to be *otherwise qualified* under State law. Voter qualification, a purely personal privilege and right, necessarily has such a degree of individuality as to make

it inappropriate for the "class action" type of assertions which this suit advanced as to constitutionality.

No authority exists to support the invitation extended this court by the government's brief to go beyond the issues raised by this appeal and determine matters not decided by the court below. Their request to the court to now adjudge certain statutes to be in violation of the Supremacy Clause must also fail on its merits since that clause does not strike down statutes simply because they deal with the same subject matter as federal enactments. They must be conflicting. A court, after proper adversary processes have been invoked, must find that there is no way to reconcile the statutes. The government's request to the court to now adjudge other statutes void as *"sophisticated"* discriminations, "in the light of the conditions prevailing in Mississippi of which this court may take *judicial notice*", is nothing more than an invitation to indulge in judicial tyranny. Such a process of deduction proceeds upon one subjective assumption based upon yet another subjective assumption. It would be in violation of every rule of proper adjudication, reason, logic and law.

ARGUMENT

I

The Court Did Not Abuse Its Discretion in Dismissing This Action As to Five of the Registrar Defendants

A

The Separate Actions Asserted Against the Separate Registrars Were Improperly Joined under the Federal Rules of Civil Procedure

It can quickly be seen that the complaint contained no allegation of joint or conspiratorial action among the six registrars. Indeed, it truthfully could not have contained such an allegation because each registrar is invested with statutory authority to register voters only within the confines of a single county. Likewise, applicants must apply only to the registrar of the county in which they reside.[1]

As to defendants, Rule 20(a) of the Federal Rules of Civil Procedure provides:

> "All persons may be joined in one action as defendants . . .
>
> (1) If there is asserted against them jointly, severally, or in the alternative any right to relief in respect of or arising out of the same transaction, occurrence or series of transactions or occurences
>
> *and,*
>
> (2) if any question of law or fact common to all of them will arise in the action."

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1. Cf. *Reddix* v. *Lucky*, 252 F.2d 930.

This rule demonstrates *two* separate and distinct criteria which must be present to permit the joinder of separate defendants in a single action. Obviously, the rule creates the separate criteria, not merely as reiterations of the same thing but to establish two distinct prerequisites. Any other interpretation would mean that one or the other of the criteria was a useless redundancy. Yet, the appellant's position plainly is that by having made a charge of common use of a set of allegedly unconstitutional laws, the dismissed complaint both constituted such action as a part of the same transaction or occurrence and raised a common question of law.[2]

Appellant also contended that the real parties in interest in whose behalf the claim was made were residents of many areas of the State of Mississippi,[3] and that it was appropriate that the separate interests of all of these real parties in interest be presented in a single suit.[4] What this contention as to plaintiffs overlooked is that the claims so asserted are individual and personal claims of those real parties in interest,[5] and each such party must have been individually shown to be properly situated and circumstanced, at all events, as to age, residency, literacy, sanity and freedom from certain criminal convictions—factors which even the complaint urged as proper—as a prerequisite to any right to relief. This contention does point up, however, that there is no such sameness of "transaction, occurrence, or

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2. Brief for the United States, pp. 68, 69. Only the latter contention is correct.

3. Brief, p. 70.

4. Cf. Rule 17(a) of the Federal Rules of Civil Procedure requiring every action to be prosecuted in the name of the real party in interest or on behalf of a designated use plaintiff.

5. *Reynolds* v. *Sims*, 377 U.S. 533; *United States* v. *Bathgate*, 246 U.S. 220, 227; and *South* v. *Peters*, 339 U.S. 276.

series of transactions or occurrences" as would give rise to a right to join the interests of these plaintiffs in a single suit under Rule 20(a). That rule also pertains to permissive joinder of plaintiffs and makes the same transaction or occurrence requirement as applies in the case of defendants.

Since neither joinder of the claims of the real parties whose rights were asserted by plaintiff, nor the joinder of the defendants were permitted under the provisions of Rule 20(a), the court's action in dismissing the parties improperly joined was valid.[6]

In an analogous case a plaintiff claimed that noxious fumes from two separately owned and operated plants had caused damage. He attempted to join both operations as defendants. The court held that they were improperly joined because the transactions were separate as to each defendant.[7]

As to the joinder of all of the registrar defendants in a single suit, the majority opinion stated:

> "The only nexus is the use of the same registration laws. This is insufficient to support a joint cause of action."

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6. We do not agree that Rule 20(a) furnishes the correct basis for a test of proper joinder to sustain venue. Rule 82 expressly provides that nothing in the rules is to be construed to extend or limit the venue of actions in the United States District Courts. The right to join defendants under the provisions of Chaper 87 of Title 28 logically must find its basis in joinder rights as they existed prior to the adoption of the rules. However, since the joinder was not even in accordance with the rule, we have not extended the length of the brief to include a discussion of joinder rights prior to the adoption of Rule 20(a).

7. *Stanford* v. *Tennessee Valley Authority*, (D.C., Tenn.) 18 F.R.D. 152. The venue problems present here were not present there and later the causes were consolidated for trial.

To hold to the contrary would have been as far fetched as holding that separate citizens in Mississippi and Tennessee would be jointly suable in an action charging each with littering separate camp sites on the Natchez Trace Parkway in their separate states in violation of the same regulation of the National Park Service, or holding that separately acting Workmen's Compensation Commissioners in separate states, enforcing an identical provision of that law of each respective state, could be joined in a single action. We also fail to comprehend how any such fundamental error of joinder in such a proceeding could be cured merely by according the party brought out of his state or district of residence a separate trial. Such separate trials might be the answer when venue and jurisdiction were present, but if either is not, a rule has been allowed to negate a statute.

As to all registrar defendants except Messrs. Whittington and Holmes, who were residents of the Jackson Division of the Southern District, venue was lacking under 28 *U.S.C.* 1391(b) and 1393(a) governing civil actions of a local nature. These defendants, on their motions[7a] were entitled to be dismissed or to have their cases transferred to the proper venue.[8] As to the defendant, Holmes, he certainly was entitled, on his motion,[9] to be dismissed.

B

The Separate Actions Asserted Against the Separate Registrars Were Improperly Joined Under 42 U.S.C. 1971

The brief of the government now makes it plain that its attorneys hoped to have the court interpret their com-

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7a. R. 45, 48, 51 and 53.

8. 28 U.S.C. 1406(a).

9. R. 61. This defendant also moved for severance and a separate trial, R. 63 and R. 26.

plaint as one for statewide relief not even confined to the six counties whose registrars were named. If such a suit had been allowed, then every registrar would necessarily have been affected by any wrongful action proven against another registrar. A more effective denial or perversion of a litigant's basic right to his or her day in court cannot be envisioned.

Such a procedure is completely contrary to the representations made to Congress by the Department of Justice, in seeking the enactment of what is now 42 *U.S.C.* 1971 (e). In hearings before the Senate Judiciary Committee on March 28 and 29, 1960, former U. S. Judge L. E. Walsh, then Deputy Attorney General, stated the position of the Department of Justice. With reference to the words of subsection (e) which read ". . . after each party has been given notice and an opportunity to be heard . . .", he refused to approve any attempt at definition or amplification. This is what he stated:

> "Mr. Walsh. Yes, they do. This language did not come from a New York lawyer. It came from a lawyer from Louisiana, a very distinguished man, Ed Willis, who is one of the senior members of the House Judiciary Committee. He wanted to make sure that this pattern and practice was not found until everyone had an opportunity to be heard. *These are classic words of art. They mean an opportunity to be heard in argument, an opportunity to present evidence, an opportunity to take advantage of every rule of Federal practice.*
>
> "If we start to spell out what they mean, then you have to spell them out completely, not only the opportunity to be heard, to examine on direct, to examine on cross-examination, to examine on redirect, to make objections to the evidence—I do not think we can spell out all over again the entire rules of civil practice here.

"An opportunity to be heard means to be heard as an adversary in the fullest sense of the word as used in the Federal courts.

* * *

"Mr. Walsh. I do not think there is any doubt as to the meaning of an opportunity to be heard, unless you wanted to give it some special meaning, which we certainly do not. The Department of Justice and the administration have no desire to intrude into the *administration* of the election laws of a State until it has proven by a preponderance of the evidence the existence of a pattern and practice of discrimination and it does not want to do this until everyone who doubts the existence of that pattern has had an opportunity to present evidence to the contrary and been heard in full."[10]

Congressman McCulloch, the sponsor of the 1960 act authored by the Justice Department and its principal proponent, debated with Representation Gross thus:

Mr. Gross: "Now, then, if everyone who may be brought in under this bill is guaranteed his day in Court, that must be found in *some other law;* is that not correct?"

Mr. McCulloch: *"That is not correct. His day in Court is guaranteed in the McCulloch bill, H. R. 11160."*

Mr. Gross: "Is there no other law that guarantees an American citizen the right to have his day in Court?"

Mr. McCulloch: "Oh, yes. All laws, all the accepted practices at common law, or under equity, or under the statute guarantee a citizen his day in Court."

Mr. Gross: "That being true, then why some of the provisions of this bill?"

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10. Hearings before Senate Judiciary Committee on March 28-29, 1960, p. 120.

> Mr. McCulloch: *"We want to make it abundantly clear that under H. R. 11160,* people *who are charged with violation of the law, and of discriminating against* people *on account of race or color may have their* day in Court *and prove that that was not the case."*[11]

The position of the Attorney General in the present litigation would have short circuited every protection which that same department assured Congress would be accorded to litigants circumstanced exactly as these defendants here, and which the sponsor of the legislation and Congress intended to secure. If the present claim had been sustained, eighty-one registrars would be denied their right to their own day in court as an adversary in the fullest sense of the word. Just as no State registration official can despoil a State's valid laws, so none of them may, by their wrongful actions, infuse the correct actions of others with any element of wrongdoing. Section 1971(e) contemplates that pattern and practice actions will be tried against *individuals* as adversaries and on the basis of what *they* each did or omitted. Guilt by association is an anachronism which Congress rejected in this law and which ought to be without vitality in any court today.

The action of the Court under Rule 21 of the Federal Rules of Civil Procedure in dropping five of the registrars as parties is one in relation to which the Court is vested with a wide discretion which may not be reversed in the absence of clear abuse.[12]

The court below did not abuse its discretion in dismissing this action against the defendants, Easley, Smith, Lamb, Wiggins and Holmes on the basis of misjoinder and lack of venue.

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11. 106 Congressional Record 5907, 86th Congress, 2nd Session.

12. *Meyercheck* v. *Givens,* (C.A. 7th) 180 F.2d 221; *Weaver* v. *Marcus,* (C.A. 4th) 165 F.2d 862.

II

Appellant Lacked Authority to Bring or Maintain This Action Against Any Defendant

A

42 U.S.C. 1971 Was the Sole Basis for This Complaint

The genesis of authority for every Federal power is the Constitution of the United States. More precisely, the present litigation looked to the 15th Amendment to furnish it standing.[13] The second paragraph of that amendment *does not* say, "The *Attorney General* shall have power to enforce this article." The people vested this power in the *Congress.*

The power so vested in Congress was the power to enforce the Amendment by appropriate legislation. 42 U.S.C., Section 1971(a), was enacted under the power conferred by Section 2, and Section 2 is the sole and only basis for 1971(a).[14] To merely state these most basic facts is to assert that there was no "inherent" standing in the Attorney General to commence or maintain this litigation, exclusive of such authority as may have been conferred by § 1971 (c).

B

§ 1971 Only Authorizes a Proper Proceeding for Preventive Relief

Legislation enacted on the basis of Section 2 of the Fifteenth Amendment must be limited to legislation appropriate to the correction of any discrimination on account

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13. *Neal* v. *Delaware*, 103 U.S. 370, 389; *Ex Parte Yarbrough*, 110 U.S. 651, 665; *Guinn* v. *United States*, 238 U.S. 347, 363; *United States* v. *Amsden*, 6 Fed. 819, 822; and *Karem* v. *United States*, 121 Fed. 250, 252.

14. *United States* v. *Reese*, 92 U.S. 214; *Guinn* v. *United States*, 238 U.S. 347.

of race or color committed by a State officer in administering State requirements for registration or voting. *Karem* v. *United States*[15] dealt with this question. The Court, speaking through Judge Lurton, discussed the Fifteenth Amendment and the predecessor statute of 1971(a) (§ 2004 Revised Statutes) as follows:

> "The Fifteenth amendment is therefore a limitation upon the powers of the states in the execution of their otherwise unlimited right to prescribe the qualification of voters in their own elections, and the power of Congress to enforce this limitation is necessarily limited to legislation appropriate to the correction of any discrimination on account of race, color, or condition. The affirmative right to vote in such elections is still dependent upon and secured by the Constitution and laws of the state, the power of the state to prescribe qualification being limited in only one particular."

And, in *United States* v. *Miller*,[16] the Court spoke thus of the reach of the 15th Amendment and of legislation enacted pursuant thereto:

> "It is manifest that no power is conferred on congress by the second section of the 15th amendment to enact legislation for the regulation and control of elections generally, nor for securing to the citizens of the United States the right to vote at all elections. (The right of suffrage is not inherent in citizenship, nor is it a natural and inalienable right, like the right to life, liberty, and the pursuit of happiness.) Unless restrained by constitutional limitation, the state legislature may lawfully confer the right of suffrage upon such portion of the citizens of the United States as it may deem expedient, and may deny that right to all others.

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15. (6 Cir.) 121 Fed. 250, 255.

16. (D.C., Ind.), 107 Fed. 913, 914, 916.

> "As we have said, this section [§ 5507, Revised Statutes] is bottomed solely on the fifteenth amendment. It cannot be successfully contended that the amendment confers authority to impose penalties for every conceivable wrongful deprivation of the colored man's right to vote."

Under § 1971(c), Congress has seen fit to discharge the power vested in it by delegating to the Attorney General permission to:

> ". . . institute for the United States, or in the name of the United States, a civil action or other *proper* proceeding for *preventive* relief, including an application for a permanent or temporary injunction, restraining order or other order."

The only authority extended is authority to bring a proper proceeding and only such a proper proceeding as seeks preventive relief. These words do not contemplate the creation of a new and unknown judicial proceeding. Their meanings are well defined. We respectfully submit, the word "proper" has the obvious connotation of a proceeding recognized and established by the principles and usages of law. The word "preventive", equally as obviously, was used in contradistinction to affirmative. No authority was advanced for the Attorney General to seek *affirmative* relief. That this is correct is as readily deduced merely from a reading of the statute as the difference between "don't" and "do". It argues itself. Congress must have been cognizant of the fact that they were exercising a power granted by an amendment which proscribed the actions of the States but which did not attempt to invest Congress with any power, ex cathedra, to exercise affirmative prerogatives so vital to State sovereignty.

C

The Dismissed Complaint Sought Affirmative Relief

A principal prayer of the complaint was for a declaration that State statutes were made invalid by discriminations in the past and by appellant's speculations that discrimination could take place under them in the future. The statutes themselves are valid on their face and most certainly are capable of fair and constitutional application, but that point is not at issue here. Whether voter registration statutes of the State of Mississippi are constitutionally valid or void is not material to any question posed by this appeal. As will be demonstrated hereinafter, attacks on constitutionality of State legislation cannot be made in the abstract, nor should such statutes be condemned by this court until they have been construed by the courts of that State.

As to every affirmative aspect of a citizen's qualification to vote, the State is *parens patriae*. Even though this Court has ruled that in a proper suit Congress could authorize the Attorney General to sue to prevent 15th Amendment violations,[17] it must be recognized with equal force that the interest which supports this authorization can go no further than to *prohibit* discrimination, *i.e.*, *preventive* relief. As to relief which establishes or requires a court to establish voter qualification standards different from those set by the State—such relief invades an area so clearly the province of the States that the interest and authority of the national government evaporates. The citizen's affirmative rights in this area are not attributes of national citizenship. The State is the government which is *parens patriae* here.

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17. *United States* v. *Raines*, 362 U.S. 17.

As to the relationship of the State and national governments to their respective citizens, the converse of this very situation was presented in the case of *Massachusetts* v. *Mellon*, 262 U.S. 447, 485. This court held:

> "We come next to consider whether the suit may be maintained by the state as the representative of its citizens. To this the answer is not doubtful. We need not go so far as to say that a state may never intervene by suit to protect its citizens against any form of enforcement of unconstitutional acts of Congress; but we are clear that the right to do so does not arise here. Ordinarily, at least, the only way in which a state may afford protection to its citizens in such cases is through the enforcement of its own criminal statutes, where that is appropriate, or by opening its courts to the injured persons for the maintenance of civil suits or actions. But the citizens of Massachusetts are also citizens of the United States. It cannot be conceded that a state, as parens patriae, may institute judicial proceedings to protect citizens of the United States from the operation of the statutes thereof. While the state, under some circumstances, may sue in that capacity for the protection of its citizens (Missouri v. Illinois and Chicago District, 180 U. S. 208, 241, 21 Sup. Ct. 331, 45 L. Ed. 497), it is no part of its duty or power to enforce their rights in respect of their relations with the federal government. In that field it is the United States, and not the state, which represents them as parens patriae, when such representation becomes appropriate; and to the former, and not to the latter, they must look for such protective measures as flow from that status."

No power is or could ever be rightfully reposed in a Federal official to thumb through the statutes of the States and pick out those he does not like for a test of constitutionality according to a hypothetical set of facts

which he prepares. If this could be done we might as well be back in the Procrustean era where everyone fit the bed, or else. Procrustes might approve but Liberty cries, "Never!". There could not be any concept more dangerous to the maintenance of our republic, nor one more foreign to the nature of preventive relief.

If an officer has misused a statute which is capable of a valid application, preventive relief would consist of a prohibitory injunction to the officer against future misuse. It was proper for the court below to refuse to act affirmatively to destroy the State's statutes. A proper proceeding for preventive relief would be one in which the court would be requested to correct the offending official—not destroy a statute which the State had authority to enact. Condoning an action which would nullify the statute just to get at the officer's actions would be equivalent to approval of burning down the barn to get rid of a rat.

III

The Attorney General Has Had No Standing under § 1971 to Attack Constitutionality

A

Unconstitutional State Statutes Are Not Involved in Such a Proceeding

Section 1971(a) operates *"to the contrary notwithstanding"* any State constitutional or statutory provisions. Subsection (c) does not attempt to invest the Attorney General with authority to attack the provisions of a State's statutes. It speaks exclusively of acts or practices of persons. Such an attack upon statutes is not, as has been demonstrated in Point II above, within the concept of preventive relief. A statutory attack is also inconsistent

with the words of Subsection (d), which vest jurisdiction in District Courts "without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law." This language negates the necessity for proceedings by individuals to appeal decisions of voter registrars made as to the personal circumstances of whether or not the individual was otherwise qualified. This shows the statute contemplates action by a registrar and not a proceeding to attack constitutionality. Subsection (e) requires that the rights secured be dependent upon qualification "under State law". The adjudications as to the existence of a pattern or practice of discrimination under that subsection are to be "within the affected area", which is specifically defined as meaning "any *subdivision* of the State". This again indicates that no such *statewide* pattern or practice relief as was claimed by the dismissed complaint was contemplated by Congress.

Among the thousands of pages of Reports of debates in the House and Senate as reflected in the Congressional Record, Reports of Committee Hearings before committees of the House and Senate and Reports by these committees on the Civil Rights Acts of 1957 and 1960, our search has failed to disclose that the idea or suggestion was even mentioned that this enactment might be construed as extending to the Attorney General the authority to attack the constitutionality of a state statute rather than to attack the actions of a State official which deprived or threatened to deprive a citizen of a right or privilege defined in § 1971 (a). In fact, a completely contrary assertion is contained in several meaningful places.

Throughout these proceedings Congress was of the opinion that this 1957 enactment was intended to make criminal prosecutions easier and to enable the Federal

Government to more readily obtain convictions by translating the existing Federal Criminal laws on voting discrimination into the form of injunction proceedings. This is borne out by the following quotation from House Report No. 291, Committee on the Judiciary, 85th Congress, 1st Session, pp. 5 and 6:

> "The proposal does not extend nor increase the areas of Civil Rights jurisdiction in which the Federal Government is entitled to act. Those rights are presently protected by Constitutional amendment and, when violations occur, they are subject to Federal prosecution. *The provisions of the legislation, in fact, merely substitute civil proceedings for criminal proceedings in the already established fields.*"

To the same effect also are remarks in Hearings Before the Subcommittee on Constitutional Rights of Senate Judiciary Committee, 85th Congress, 1st Session, Feb. 14—Mar. 5, 1957, pp. 9 and 29. In the Report of Hearings before the House Judiciary Committee, 86th Congress, 2nd Session, Feb. 9 and 16, 1960, p. 35, the Deputy Attorney General, Ex-Federal Judge Walsh, stated:

> "The identity of the registrar is secondary to his State office. He is here because he is a State officer, *and he is abusing the rights of a State officer.*"

Since a State can not violate a Federal Criminal Statute, obviously the criminal actions which were being converted to the expeditious injunction route of enforcement did not contemplate suits against the State. With equal force it can be reasoned that if the *abuse* of office of a State official is what is aimed at, then that action is not the act of the State but is the responsibility of that official, even

though it is also "State action" subject to constitutional protection.[18]

In December of 1963 Mr. McCulloch and other members of his committee reaffirmed that their attention had been directed to unfaithful administration as evidenced by the following quotation:

> Here, then, is the crux of the problem. For the basic troubles come not from discriminatory laws, but (as the Civil Rights Commission so well expressed in its 1959 report, p. 133) "from the discriminatory application and administration of apparently nondiscriminatory laws." (House of Representatives Report 914, Part 2, 88th Congress, 1st Session, p. 5.)

Appellant's brief quotes from Senator Ervin to indicate that he imagined a right was created in the Attorney General to attack State statutes. We do not interpret his statements to have the meaning they suggest by their italics. In the first place, the remarks were directed to Title III of the bill which was defeated and not to Title IV, which subsequently became the Civil Rights Act of 1957. In the second place, we would not contend that a State could put unconstitutionally discriminatory action by a registrar beyond the reach of a *proper* proceeding for preventive relief under § 1971 by passing an act attempting to authorize the discrimination. The *proper* way such void law could be "set at naught" would be a proceeding against the enforcement official—the registrar—to enjoin or prevent his application of such statute. . . .

The fact that the Attorney General is not invested with authority to attack such provisions in no way enfeebles

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18. See the many cases on this point collected in the Brief for the State of Mississippi Point I, C as well as *Mine Safety Appliances, Inc.*, v. *Forrestal*, 326 U.S. 371, discussed in Point II A of said brief at page 22.

§ 1971. It only limits its operations to the confines of a proper, constitutional respect for State governments. No unconstitutional activity is thus put beyond the statutes' preventive reach. Every word of § 1971 retains its fullest meaning. No person whose actions or threats of actions are contrary to subsection (a) may avoid the thrust of the statute by an attempt to justify proscribed conduct on the basis of a patently void State law. It is even more obvious that such official cannot choose to violate a State law which can be validly administered, and then avoid the consequences of his act by pointing to the law. Prevention is available, in any event, *"notwithstanding"* State law, if any official conduct—State action—violative of § 1971 (a) is proven.

No amount of righteous indignation can alter § 1971. It says what it says. No matter how high the aim or motive nor how basic the rights protected, a statute is not susceptible of executive or judicial *amendment* which would alter the words Congress chose to use. The Attorney General can only proceed within the framework of the 15th Amendment to the Constitution and § 1971.

B

The Court Will Not Make an Abstract Adjudication of Constitutionality

The complaint dismissed by the court below sought an abstract adjudication of the constitutionality of two constitutional and five statutory provisions of the State of Mississippi which that State has established to govern the qualification of all of its electors. This constitutional essay was not sought, in the words of the government's brief, "on behalf of one individual or the inhabitants of a single community."[19] They defined the

19. p. 70.

test being made by the complaint as one which was so unlimited and so intangible as to cover just "wherever and by whomever" the statutes might have been or might be applied. The complaint did not allege any specific application of any law attacked. It was couched completely in vague and abstract terms. It made no case or controversy which was essential to bring it within the ambit of the judicial power.

In the case of *Muskrat* v. *United States*, 219 U.S. 346, this court laid out an apt definition of what factors had to be present to bring a request for a decision on the constitutionality of legislation within the judicial power.

> "What, then, does the Constitution mean in conferring this judicial power with the right to determine 'cases' and 'controversies.' A 'case' was defined by Mr. Chief Justice Marshall as early as the leading case of Marbury v. Madison, 1 Cranch, 137, 2 L. Ed. 60, to be a suit instituted according to the regular course of judicial procedure. And what more, if anything, is meant in the use of the term 'controversy?' That question was dealt with by Mr. Justice Field, at the circuit, in the case of Re Pacific R. Commission, 32 Fed. 241, 255. Of these terms that learned justice said:
>
> "The judicial article of the Constitution mentions cases and controversies. The term 'controversies,' if distinguishable at all from 'cases,' is so in that it is less comprehensive than the latter, and includes only suits of a civil nature. Chisholm v. Georgia, 2 Dall. 431, 432, 1 L. Ed. 445, 446, 1 Tucker's Bl. Com. App. 420, 421. By cases and controversies are intended the claims of litigants brought before the courts for determination by such regular proceedings as are established by law or custom for the protection or enforcement of rights, or the prevention, redress, or punishment of wrongs. Whenever the claim of a party under the Constitution, laws, or treaties of the United States takes such a form that the judicial power is capable of acting upon it, then

it has become a case. The term implies the existence of present or possible adverse parties, whose contentions are submitted to the court for adjudication."

* * *

See also, in the connection, Chicago & G. T. R. Co. v. Wellman, 143 U.S. 339, 36 L. Ed. 176, 12 Sup. Ct. Rep. 400. On page 345 of the opinion in that case the result of the previous decisions of this court was summarized in these apposite words by Mr. Justice Brewer, who spoke for the court:

"Whenever, in pursuance of an honest and actual antagonistic assertion of rights by one individual against another, there is presented a question involving the validity of any act of any legislature, state or Federal, and the decision necessarily rests on the competency of the legislature to so enact, the court must, in the exercise of its solemn duties, determine whether the act be constitutional or not; but such an exercise of power is the ultimate and supreme function of courts. It is legitimate only in the last resort, and as a necessity in the determination of real, earnest, and vital controversy between individuals. It never was the thought that, by means of a friendly suit, a party beaten in the legislature could transfer to the courts an inquiry as to the constitutionality of the legislative act.";

The court refused relief in that case with this reasoning:

It is therefore evident that there is neither more nor less in this procedure than an attempt to provide for a judicial determination, final in this court, of the constitutional validity of an act of Congress. Is such a determination within the judicial power conferred by the Constitution, as the same has been interpreted and defined in the authoritative decisions to which we have referred? We think it is not. That judicial power, as we have seen, is the right to determine actual controversies arising between adverse litigants, duly

instituted in courts of proper jurisdiction. The right to declare a law unconstitutional arises because an act of Congress relied upon by one or the other of such parties in determining their rights is in conflict with the fundamental law. The exercise of this, the most important and delicate duty of this court, is not given to it as a body with revisory power over the action of Congress, but because the rights of the litigants in justiciable controversies require the court to choose between the fundamental law and a law purporting to be enacted within constitutional authority, but in fact beyond the power delegated to the legislative branch of the government. This attempt to obtain a judicial declaration of the validity of the act of Congress is not presented in a "case" or "controversy," to which, under the Constitution of the United States, the judicial power alone extends.

In *Smith* v. *Indiana*, 191 U.S. 138, a claim by a public officer in behalf of his constituents, as to whom he had an official duty, was refused in these words:

> "Different considerations, however, apply to the jurisdiction of this court, which we have recently held can only be invoked by a party having a personal interest in ths litigation. It follows that he cannot sue out a writ of error in behalf of third persons. *Tyler* v. *Registration Court Judges*, 179 U.S. 405, 45 L. Ed. 252, 21 Sup. Ct. Rep. 206; *Clark* v. *Kansas City*, 176 U.S. 114, 44 L. Ed. 392, 20 Sup. Ct. Rep. 284; *Turpin* v. *Lemon*, 187 U.S. 51, 47 L. Ed. 70, 23 Sup. Ct. Rep. 20; *Lampasas* v. *Bell*, 180 U.S. 276, 45 L. Ed. 527, 21 Sup. Ct. Rep. 368; *Ludeling* v. *Chaffe*, 143 U.S. 301, 36 L. Ed. 313, 12 Sup. Ct. Rep. 439; *Giles* v. *Little*, 134 U.S. 645, 33 L. Ed. 100[illegible], 10 Sup. Ct. Rep. 623. These authorities control the present case. It is evident that the auditor had no personal interest in the litigation. He had certain duties as a public officer to perform. The performance of those duties was of no personal benefit to him. Their nonperformance was equally so. He neither gained

nor lost anything by invoking the advice of the supreme court as to the proper action he should take. He was testing the constitutionality of the law purely in the interest of third persons, *viz.*, the taxpayers, and in this particular the case is analogous to that of *Caffrey* v. *Oklahoma*, 177 U.S. 346, 44 L. Ed. 799, 20 Sup. Ct. Rep. 664. We think *the interest of an appellant in this court should be a personal, and not an official, interest,* and that the defendant, having sought the advice of the courts of his own state in his official capacity, should be content to abide by their decision.

On certiorari to the Supreme Court of Mississippi, Chief Justice Hughes, writing for a unanimous court, presented the principle and authorities in *Columbus C. & G. Railroad Company* v. *Miller*, 283 U.S. 96, 100. These were the court's words:

". . ..the protection of the Fourteenth Amendment against state action is only for the benefit of those who are injured through the invasions of personal or property rights or through the discriminations which the amendment forbids.[2] The constitutional guaranty does not extend to the mere interest of an official, as such, who has not been deprived of his property without due process of law or denied the equal protection of the laws."[3]

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2. Clark v. Kansas City, 176 U.S. 114, 118, 20 S. Ct. 284, 44 L. Ed. 392; Standard Stock Co. v. Wright, 225 U.S. 540, 550, 32 S. Ct. 784, 56 L. Ed. 1197; Massachusetts v. Mellon, 262 U.S. 447, 488, 43 S. Ct. 597, 67 L. Ed. 1078; Roberts & Schaefer Co. v. Emmerson, Secretary, 271 U.S. 50, 54, 55, 46 S. Ct. 375, 70 L. Ed. 827, 45 A.L.R. 1495; Liberty Warehouse Co. v. Burley Tobacco Growers' Association, 276 U.S. 71, 88, 48 S. Ct. 291, 72 L. Ed. 473.

3. Smith v. Indiana, supra; Braxton County Court v. West Virginia, 208 U.S. 192, 197, 198, 28 S. Ct. 275, 52 L. Ed. 450; Marshall v. Dye, 231 U.S. 250, 257, 34 S. Ct. 92, 58 L. Ed. 206; Stewart, Treasurer, v. Kansas City, supra.

The authorities were recently collected by the Court in *Coffman v. Breeze Corporation, Inc.*, 323 U.S. 316, 324, 325.

"The declaratory judgment procedure is available in the federal courts only in cases involving an actual case or controversy, Nashville, Chattanooga & St. Louis Railway Co. v. Wallace, 288 U.S. 249, 258-264, 53 S. Ct. 345, 346-348, 77 L. Ed. 730, 87 A.L.R. 1191; Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 239, 240, 57 S. Ct. 461, 463, 81 L. Ed. 617, 108 A.L.R. 1000, where the issue is actual and adversary. Chicago & Grand Trunk Railway Co. v. Wellman, 143 U.S. 339, 12 S. Ct. 400, 36 L. Ed. 176; South Spring Gold Co. v. Amador Gold Co., 145 U.S. 300, 301, 12 S. Ct. 921, 36 L. Ed. 712, and it may not be made the medium for securing an advisory opinion in a controversy which has not arisen. State of New Jersey v. Sargent, 269 U.S. 328, 46 S. Ct. 122, 70 L. Ed. 289; United States v. West Virginia, 295 U.S. 463, 55 S. Ct. 789, 79 L. Ed. 1546; Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 324, 56 S. Ct. 466, 472, 80 L. Ed. 688; Anniston Manufacturing Co. v. Davis, 301 U.S. 337, 355, 57 S. Ct. 816, 824, 81 L. Ed. 1143; Electric Bond Co. v. Commission, 303 U.S. 419, 443, 58 S. Ct. 678, 687, 82 L. Ed. 936, 115 A.L.R. 105.

"In any case the Court will not pass upon the constitutionality of legislation in a suit which is not adversary, Chicago & Grand Trunk Railway v. Wellman, supra; Bartemeyer v. Iowa, 18 Wall. 129, 134, 135, 21 L. Ed. 929; Atherton Mills v. Johnston, 259 U.S. 13, 15, 42 S. Ct. 422, 66 L. Ed. 814, or upon the complaint of one who fails to show that he is injured by its operation, Tyler v. Judges, 179 U.S. 405, 21 S. Ct. 206, 45 L. Ed. 252; Hendrick v. Maryland, 235 U.S. 610, 621, 35 S. Ct. 140, 141, 59 L. Ed. 385, or until it is necessary to do so to preserve the rights of the parties. Liverpool, N. Y. & Philadelphia Steamship Co. v. Immigration Commissioners, 113 U.S. 33, 39, 5 S. Ct. 352, 355, 28 L. Ed. 899; Burton v. United States, 196 U.S. 283, 295, 25 S. Ct. 243, 245, 49 L. Ed. 482; Abrams v. Van Schaick, 293 U.S. 188, 55 S. Ct. 135, 79 L. Ed. 278; Wilshire Oil

Co. v. United States, 295 U.S. 100, 55 S. Ct. 673, 79 L. Ed. 1329."

The cases limiting the application of these rules are inapposite. In *Barrows* v. *Jackson*, 346 U.S. 249, the Court acknowledged that it was dealing with a "unique" situation in which *court action* of a State was held to constitute an impending threat of unconstitutional action by the enforcement of a racial covenant. The court there allowed the respondent, *who had been sued for damages totaling $11,600.00*, to contest the constitutionality of such enforcement. It based its decision on the respondent's pocketbook interest and also on the fact that the respondent was the *only* person who could effectively assert the constitutional rights involved. The court held that:

> "it would be difficult if not *impossible* for those whose rights were asserted to prevent their grievances before any court."

The Court fully acknowledged the validity of rules limiting the right of a litigant to raise abstract constitutional issues in cases where it was possible for the person whose rights were involved to secure relief in a case in which a specific application could be presented.

Compare also *National Association for A. of C. P.* v. *Alabama*, 357 U.S. 449, 458, where an association was allowed to assert the rights of its members because their rights there asserted *could not* be protected except through the association because

> "To require that it be claimed by the members themselves would result in nullification of the right at the very moment of its assertion."

No such deficit in the individuals to whom the right asserted belonged, as was found in these cases, exists here.

The identity of everyone whose rights were involved in the dismissed complaint would necessarily be disclosed in making the required showing that they were "otherwise qualified".[20] In truth, the individuals are the *only* proper parties to seek a non-abstract adjudication of constitutionality.

This court recently discussed the cases establishing the rules which guide courts in making or refusing to make adjudications on such constitutional questions in the case of *United States* v. *Raines*, 362 U.S. 17. After stating and discussing the various rules applicable to adjudications of constitutionality, the court pointed out five instances in which those rules might not be applicable. No one of the five is pertinent here for the reasons indicted by each.

(1) Where the constitutional rights of one not a party would be impaired *and* that party would have no effective way to preserve them himself.

[Obviously this exception is not pertinent here since any individual has both a remedy under State law (See *Peay* v. *Cox*, 190 F.2d 132), a right to bring suit against the errant official in the Federal courts (28 *U.S.C.* 1343 and 42 *U.S.C.* 1983), and is the only proper party to present a specific application of a challenged statute to avoid a request for an abstract ruling.]

(2) Where the application of these rules would itself have an inhibitory effect on freedom of speech.

[This exception is likewise inapplicable since voting is a personal privilege. Section 1971 requres an "otherwise qualified applicant". Any proper proof of an illegal deprivation of a vested right would necessarily involve specific proof of individual applications by named citizens.]

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20. See point III, c, *infra*.

(3) Where the statute in question has already been declared unconstitutional in the vast majority of its intended applications.

[The contrary is true here. See, e.g., *Darby* v. *Daniel*, (S.D. Miss.) 168 F. Supp. 170; *Williams* v. *Mississippi*, 170 U.S. 213.]

(4) When a state statute comes to this Court conclusively pronounced as having a particular application.

[No State court adjudication on the meaning of these provisions exists or was alleged to have ever been requested.]

(5) Where this court is able to discern that the creators of the provision would not have desired the enactments to stand at all unless they could stand in their every application.

[We respectfully submit that any attempt to so "discern" here would involve rank and arbitrary guesswork.]

There was not one single challenge contained in the complaint which could not have been advanced with more effect in an action by an individual against a designated registrar. In such an action, the precise application of the statute could be defined and the personal and individual rights allegedly violated by the unconstitutional application could be concretely presented to the courts.

The complaint did not charge that *every* registrar of voters had misused his or her statutory powers in a manner which violated § 1791. Rather, the plain implication is that the complaint negated any contention that *all* registrars had done so.[21] Yet the thrust of the complaint was

21. See Par. 36, R. 6.

said to be an attack on application *statewide* which would have required the Court, in considering the case stated to examine into and determine constitutionality or unconstitutionality of application in a myriad of abstract and hypothetical situations.

The complaint also disclosed on its face that Negroes are registered in the six counties whose registrars were sued (Par. 12, R. 2). While the number who were actually registered under the very laws here attacked, as opposed to previous laws, is not shown, official reports disclose that United States courts have ordered Mississippi voting registrars in some counties to utilize provisions of these same statutes.[22]

Not even this high Court has a prerogative to legislate. It cannot substitute its social beliefs for the judgment of legislative bodies who are elected to pass laws.[23] Mr. Justice Cardozo, in his fluent style, in dissenting in the case of *United States* v. *Constantine*, 296 U.S. 287, 298, 299, stated:

> "The judgment of the court rests upon the ruling that another purpose, not professed, may be read be-

22. *E.g., United States* v. *A. L. Ramsey, Circuit Court Clerk and Registrar, Clarke County, Mississippi, et al.*, (D.C., S.D. Miss., C.A. 1084), decision rendered February 5, 1963, affirmed as modified on rehearing, 331 F.2d 824, 838 (5 Cir., 1964). *United States* v. *State of Mississippi; John Q. Wood, Circuit Court Clerk and Registrar, Walthall County, Mississippi*, (D.C., S.D. Miss., C.A. 1656), decision rendered October 25, 1963. *United States* v. *Wilbur G. Ward, Circuit Court Clerk and Registrar, George County Mississippi, et al.*, (D.C., S.D. Miss., C.A 2540(5)(C)), decision rendered February 19, 1964. *United States* v. *James Daniel, Circuit Court Clerk and Registrar, Jefferson Davis County, Mississippi, et al.*, (D.C., S.D. Miss., C.A. 1655), interlocutory order entered January 4, 1963.

23. *Ferguson* v. *Skrupa*, 372 U.S. 726, 730.

neath the surface and by the purpose so imputed the statute is destroyed. Thus the process of psychoanalysis has spread to unaccustomed fields. There is a wise and ancient doctrine that a court will not inquire into the motives of a legislative body or assume them to be wrongful. Fletcher v. Peck, 6 Cranch. 87, 130, 3 L. Ed. 162; Magnano Co. v. Hamilton, 292 U.S. 40, 44, 54 S. Ct. 599, 78 L. Ed. 1109. There is another wise and ancient doctrine that a court will not adjudge the invalidity of a statute except for manifest necessity. Every reasonable doubt must have been explored and extinguished before moving to that grave conclusion. Ogden v. Saunders, 12 Wheat. 213, 270, 6 L. Ed. 606. The warning sounded by this court in the Sinking Fund Cases (Union P. R. Co. v. U. S.), 99 U.S. 700, 718, 25 L. Ed. 496, has lost none of its significance. 'Every possible presumption is in favor of the validity of a statute, and this continues until the contrary is shown beyond a rational doubt. One branch of the government cannot encroach on the domain of another without danger. The safety of our institutions depends in no small degree on a strict observance of this salutary rule.' I cannot rid myself of the conviction that in the imputation to the lawmakers of a purpose not professed, this salutary rule of caution is now forgotten or neglected after all the many protestations of its cogency and virtue."

In *James Everard's Breweries* v. *Day*, 265 U.S. 545, 559, the court stated:

"It is likewise well settled that where the means adopted by Congress are not prohibited and are calculated to effect the object entrusted to it, this court may not inquire into the degree of their necessity; as this would be to pass the line which circumscribes the judicial department and to tread upon legislative ground."

The State provisions here attacked have never received *any* construction in the court of Mississippi—a

process which would place upon them a fixed meaning in a definite situation, which meaning is necessary to enable this Court to properly rule upon their constitutionality.[24]

In a case cited with approval by appellant, *Orleans Parish School Board* v. *Bush*, 268 F.2d 78, 80, Chief Judge Tuttle, on the petition for rehearing, succinctly demonstrated the distinction between abstention which was not applicable in that case, but which would have been required here. These are his words:

> "No cause for abstention by the federal court is shown merely because a suit is brought against state officials whose conduct may be affected by untested state legislation. *It is only when the federal court is called on to interpret such state statute or rule on its constitutionality that the rule applies.*"

The same holding was made by the three-judge district court in the case of *Bevins* v. *Prindable* (E.D., Ill.) 39 F. Supp. 708, 713, aff. 314 U.S. 573, another authority cited and relied on in the brief for the United States. The applicable language used in the holding affirmed by this Court was as follows:

> "The reluctance of the federal courts to construe or pass upon the validity of a state statute or a principle of law involving state policies or local property rules, when the construction or application of such statute or principle by the state courts which will not only be authoritative but may remove all proper constitutional objections is readily obtainable, is well illustrated by recent decisions of the Supreme Court. Railroad Commission of Texas v. Pullman Company,

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24. *Government and Civic Employees Organizing Committee, C.I.O., et al.* v. *Windsor*, 353 U.S. 364; *Louisiana Power & Light Co.* v. *Thibodaux*, 360 U.S. 25; *Harrison* v. *National Association for the A. of C. P.*, 360 U.S. 167.

61 S. Ct. 643, 85 L. Ed.....; Thompson v. Magnolia Petroleum Company, 309 U.S. 478, 60 S. Ct. 628, 84 L. Ed. 876. In the former case the court said [61 S. Ct. 645, 85 L. Ed. .....]: 'In this situation a federal court of equity is asked to decide an issue by making a tentative answer which may be displaced tomorrow by a state adjudication. * * * The reign of law is hardly promoted if an unnecessary ruling of a federal court is thus supplanted by a controlling decision of a state court.'

"The case of Thompson v. Magnolia Petroleum Company, supra [309 U.S. 478, 60 S. Ct. 630, 84 L. Ed. 876], arose in a court of bankruptcy where the court had 'exclusive and nondelegable control over the administration of an estate in its possession,' yet the Supreme Court was of opinion that an undetermined question of Illinois real estate law should be sent to the courts of Illinois for decision instead of being resolved by the bankruptcy court. See, also, Achtien v. Dowd, 7 Cir., 117 F.2d 989."

Though the opposing parties to this appeal hold views as to the meaning of the statutes which are the antithesis of each other, we submit that each of these provisions is clearly susceptible of a constitutional interpretation, and application, and we further submit that it is this Court's inflexible rule that any challenged statutes qualify for construction before destruction.

C

The Complaint Did Not Allege a Cause of Action under § 1971.

By framing the complaint as one seeking an abstract adjudication of constitutionality of State statutes, the Attorney General also ignored another prerequisite to obtaining relief under § 1971. Subsection (c), which extends to that officer authorization to institute suits for the United States does so:

> "Whenever any *person* has engaged or there are reasonable grounds to believe that any *person* is about to engage in any act or practice which would deprive any other *person* of any right or privilege secured by Subsection (a) or (b) of this section, . . ."

Subsection (a) secures the right or privilege to vote to:

> "all citizens of the United States *who are otherwise qualified by law*."

What is the meaning of the phrase, "who are otherwise qualified by law to vote" as used in 42 U.S.C., Section 1971(a)? It is clear from a reading of 1971(a) that that sub-section contemplates and envisions the existence of state requirements for voting which do not *on their face* discriminate because of race or color. The operative language is "all citizens of the United States who are otherwise qualified by law to vote". This, of course, presupposes the existence of valid State requirement for voting. The appellant admits in his brief on their face, none of the constitutional provisions or statutes of the State of Mississippi deprive any citizen of the right to vote because of race or color.

It has been held by this Court that the Fifteenth Amendment, which is the sole and only basis for 1971(a), only protects the right of persons qualified by State law to vote without discrimination as to race or color. In *McPherson* v. *Blacker*, 146 U.S. 1, this Court said:

> "The right to vote intended to be protected refers to the right to vote as established by the laws and constitution of the State" (146 U.S. 39).

A contemporaneous interpretation of the predecessor statute of 1971(a) gives an identical construction to it.

In September, 1870, the Circuit Court for the District of Virginia decided the case of *Ex parte McIlwee*, 16 Fed. Cas. No. 8,820, which appellant cites with approval. Involved in that case was the refusal of a registration official of the State of West Virginia to permit a person to register to vote on account of his participation as a soldier of the Confederacy in the Civil War. Contrary to a West Virginia statute which barred any such person from voting, the Court found that such person was not "otherwise qualified by law" to vote and had no just complaint as to the action taken, stating:

> "It appears to me that this case does not come within the purview of the statute in question. That it was not the intention of congress to abolish the laws of the several states which prescribe the qualifications of voters, or even alter them, except so far as they were founded upon the distinction of race, color or previous condition of servitude, is sufficiently evident from the words of the first section of the statute which declare it to relate to 'all citizens of the United States who are or shall be otherwise qualified by law to vote.' It cannot be doubted that the meaning of this language is, that these citizens shall be qualified to vote by the law of the state or territory in which they offer to poll. That these persons thus 'otherwise qualified' shall vote without distinction of race, color, or previous condition of servitude is the purpose and intent of the statute. It was clearly the duty imposed upon the petitioner to inquire into the qualifications of the applicant for registration under the laws of the state of West Virginia, and if he found him 'otherwise qualified' he was to register him without distinction of race or color or previous condition of servitude, under the penalty of this act of congress."

The complaint does not allege that any otherwise qualified person has made application for registration to a single one or combination of the defendant registrars

who applied the statutes and constitutional provisions attacked to such otherwise qualified person, so as to deny to him the right to vote on account of race or color. The qualification of voters is a purely personal matter, just as is the determination of the qualification of individual Federal jurors who must demonstrate one by one and each person for himself that, among other things, they are able to read, write, speak *and* understand the English language.[25] The fact that a thorough research fails to disclose any case except *United States* v. *Louisiana*, 225 F. Supp. 353[26] in which the United States has attempted to attack a State statute on a claim that it violates private personal rights of citizens, argues well for the position that they do not have such authority and that the dismissed complaint found its only basis in the imagination of the personnel in the Attorney General's office.

United States v. *Raines, supra*, did not hold that any such abstract action as here brought was permissible. The ruling there was that it was appropriate and competent for Congress to authorize the United States to institute a *preventive relief* action under § 1971 because there was a *public interest* in the observance of the 15th Amendment's prohibition against racial discrimination in voting. Such ruling was made in an action in which designated and described persons were alleged to have presented themselves to Registrar Raines, and it was alleged that his official actions had denied registration to them because of race or

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25. 28 *U.S.C.* 1861 (2).

26. This case was described in the government's brief as a "companion" case. (Brief, p. 63) It was not. These two cases had many distinctions and differences, some of which were demonstrated in the majority opinion below. (R. 1548, 1549) The cases were determined differently, at different stages in the proceedings, on different fact situations, under different pleadings, by different counsel, and before different courts.

color when they were, in fact, otherwise qualified by State law. No challenge of constitutionality of State laws was involved. Only the appropriateness of Congress's designation of the United States in the specific action there brought was determined in *Raines*.

A proceeding under § 1971 by the Attorney General is a kind of hybrid use or class suit in which the plaintiff asserts the rights of others. Such a suit is a manifestly inappropriate vehicle to carry a challenge of constitutionality, particularly where, as here, the members of the class are unknown—and really unknowable, for who can be otherwise qualified if the laws for qualification are unknown. The government acknowledges that their position is a sort of "We want to have our cake and eat it too!" one because, after praying for the destruction of the State's qualification laws, they suggest to the Court that it should create some standards to take the place of those dispatched.

Such a proceeding just simply cannot present positive questions of constitutionality which this Court has long held are only made where a precise application of the law involved is presented in an adversary proceeding with real and personal—not official or public—rights asserted.

IV

The Court Should Not Consider Issues Which Have Not Been Ruled On by the Court Below

Assuming *arguendo* that the Court might not affirm the decision of the court below as to all registrars, it should certainly not accept the invitation extended by the government's brief to go beyond the issues raised by this appeal and make advance rulings on matters not yet even decided by the court below. Such a proceeding would be so completely beyond the appellate review jurisdictio.. which the

court exercises in cases of this kind that it would be completely improper, no matter how the court may view the merits of these matters at this preliminary stage.

The court expressly refused to consider such matters in *United States* v. *Raines*, 362 U.S. 17, 27, 28, in this language:

> "Questions as to relief sought by the United States are posed, but remedial issues are hardly properly presented at this stage in the litigation."

The stage in that litigation at the time of that decision was that the court had allowed an appeal from the granting of a motion to dismiss the complaint. That same reasoning is fully applicable here.

In *United States* v. *Interstate Commerce Commission*, 337 U.S. 426, 444, this court declined to pass upon the merits of the case in connection with an appeal, stating:

> "Since the district court did not pass on the merits of the allegations of the complaint, the cause is remanded to it for that purpose."

Also see, *Federal Communications Commission* v. *W.J.R., The Good Will Station*, 337 U.S. 265, 285, and *Polizzi* v. *Cowles Magazines, Inc.*, 345 U.S. 663, 667.

The invitation to the court to depart from long recognized and accepted review procedures is not well taken on its merits.

The supremacy clause does not strike down statutes simply because they might operate upon the same subject matter as Federal enactments. To run afoul of the supremacy clause a statute must *conflict* with the Federal enactment. There must be an irreconcilable intrusion by the State enactment into the area covered by Federal law.[27]

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27. *Riggs* v. *Del Drago et al.*, 317 U.S. 95, 102; *Sinnot et al.* v. *Davenport et al.*, 63 U.S. (22 How.) 227, 242.

In the latter case the court held that the repugnance or conflict must be so direct and positive, that the two acts could not be reconciled or consistently stand together.

The Federal law[28] requires the preservation of registration records for a period of 22 months from the election date involved. The State statute[29] provides that the registrar is not required by State law to retain or preserve these records where no appeal is taken from the registrar's ruling on the applicant's qualification. *The State law does not require the destruction of records* nor does it authorize a registrar to disregard other provisions of Federal law which direct him to maintain and preserve these records for a fixed length of time. The statutes are capable of being completely reconciled and have been so reconciled by the consistent rulings of the Attorney General of the State of Mississippi, who has advised registrars that the State law only *permitted* destruction of records not otherwise required to be preserved by the Federal enactment. When this statute is construed by the Supreme Court of Mississippi, we have no doubt but that a similar construction will result.

Attack is made upon § 3213 of the Mississippi Code of 1942 contending that the statute allows rejection of an applicant for registration

> "for errors or omissions that are not material in determining voter qualification."[30]

Here again the brief for the United States jumps from an erroneous assumption to an unwarranted conclusion. The

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28. 42 U.S.C. 1974.

29. Miss. Code of 1942, § 3209.6.

30. Brief for the United States, p. 97.

recently enacted amendment to 42 *U.S.C.* 1971 (a) provides that otherwise qualified citizens are not to be denied the right to vote because of errors or omissions in application forms which are not *"material"* in determining the individual's qualification under State law. Section 3213 of the *Mississippi Code* provides that it is mandatory for an applicant to complete all blank spaces in the application form properly and responsively; and Section 3209.6 of the *Mississippi Code of 1942* provides that applications shall be designed to exhibit

> "the *essential* facts and qualifications necessary to show that such person is entitled to register and vote."

Under the ordinary rules of statutory construction established by the Supreme Court of the State of Mississippi, statutes relating to the same subject matter must be construed in *pari materia*. The position of the government's brief completely ignores the proper application of such rules of statutory construction which doubtless would be applied if, in the orderly course of procedure, the question were raised and presented to the Supreme Court of the State of Mississippi. When the Mississippi statutes are thus read together, it is only "essential" facts which are required to be properly and responsively answered. We submit that the difference between errors or omissions that are not "material" and errors or omissions that are not "essential" is the difference between Tweedle dum and Tweedle dee, which, according to Lewis Carroll, is no difference at all.

If the true meaning of the laws of the State of Mississippi is not being correctly applied by registrars, correction may be had in accordance with law not in spite of it. We respectfully submit, the government's request for a rash departure from existing legal procedures in the name of expediency, and based upon false assumptions of neces-

sity, should fall on deaf ears. The appeal to this Court to do otherwise is an appeal to emotion not to reason or established legal procedure. It is the same appeal to emotion over law, logic or precedent that is made by the suggestion in the minority opinion, that the Court should not hold that Congress gave the United States the authority to seek redress only for "little wrongs".[31] The men who made this law were elected by State qualified electors and it ought never to be assumed that they legislated without the most solemn regard for the proper demarcation between the Federal and State sovereignties, or that they would knowingly turn the creature loose to devour its creators. They obviously were not willing to authorize a single public officer to invade State functions to correct alleged failings that could be remedied with less drastic and more constitutional procedures.

The Appellant lastly requests this Court to take immediate and unauthorized proceedings relative to the provisions of three Mississippi enactments requiring publication of names of applicants for registration, which the government claims constitutes an invitation to private citizens to challenge these applicants' qualifications. No argument or authority was advanced to demonstrate that these statutes were not within the ambit of the State's authority to fix procedures for qualification of electors. Their reasoning rather proceeds on the fine-spun theory that it is not the explicit words or any objective criteria which nullifies this law; on the contrary, the reasoning is that their *subjective* analysis discloses (since they can see nothing wrong with the words but they still don't like the statute) that this must be a "sophisticated" means of denying or abridging the right of citizens of the United States to vote on account of race, color or previous condition of

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31. R. 1568.

servitude. The reasoning must then proceed to assume that unnamed and unknown persons who might be applicants for registration would, if they did apply, be rejected because of these provisions, although they were otherwise qualified by State law All of this is still not enough. The condemnation of the statute can only be brought to fruition by adding to the *subjective* test of indirection or sophisticated violation, a plea to the Court to "take judicial notice" of conditions prevailing in Mississippi. This adds a *second subjective hypothesis* to the first, which we submit should never be followed by any court. It is nothing less than appeal for a Judge to make a decision based on what he "feels" the case before him warrants.

If an appellate Judge can subjectively determine that a law valid on its face is really a sophisticated violation of the Constitution based upon what he subjectively believes he judicially knows,[32] then the door to judicial tyranny is open.

Contrary to Judge Brown's minority views, if a judge is not careful to disregard his personal beliefs and feelings, he has stripped the blindfold from the eyes of Astraea and weighted her scales. Then, like a crooked referee, all that matters is which side has his favor. Equal justice under law cannot equate with equal justice under judges.

V

Reply to Brief for the United States

The brief for the United States proceeds to discuss not only the method of administration of the various Mississippi

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32. "Judicial knowledge" in the final analysis really means what the judge believes, based upon what he reads in print, sees and hears on the television and radio, or hears from acquaintances —every last bit of which he would reject as hearsay if it was submitted to him in his capacity as a trier of fact.

statutes attacked but also their constitutionality. Appellees contend that such discussions are beside the mark in connection with this appeal inasmuch as the complaint was dismissed for lack of a proper procedural base. It is that part of the lower court's ruling which the appeal brings here for review. Nevertheless, because the opinion of the court below did discuss the statutes and because they were presented in the brief for the appellant, we respectfully submit the following brief resumé.

The meanings of *Davis* v. *Schnell*, (S.D. Ala.) 81 F. Supp. 872, Aff. 336 U.S. 933, and *Yick Wo* v. *Hopkins*, 118 U.S. 356, were correctly expounded by the court below (R. 1551, 1552) and have not been properly explained in the government's brief. Although the opinion wandered, the only decision in *Yick Wo* was that he was wrongfully imprisoned because of improper and discriminatory application of a municipal ordinance and his Writ of Habeas Corpus should be granted. The remarks about the validity of the statute were dicta.

The proper test of the constitutionality of a law is the *mandamus* test suggested in *Yick Wo* and adopted by the lower court (R. 1551, 1552); for only such an objective test would accord with this Court's requirements that the *Constitution* which this Court expounds does not embody any particular set of social or ethical opinions or theory of economics;[33] and its consistent requirement that statutes are to be upheld unless no conceivable set of facts may be advanced in support of their constitutionality;[34] and that proper constitutional construction requires the use of a meaning which will uphold, not destroy.[35] These are but

33. *Otis* v. *Parker*, 187 U.S. 606, 609.

34. *Rast* v. *Van Deman & Louis Co.*, 240 U.S. 342.

35. *United States* v. *Classic*, 313 U.S. 299.

different ways of stating what this Court held in *Goillion* v. *Lightfoot*, 362 U.S. 339, that the conclusion of unconstitutionality must be "irresistible"—tantamount for all practical purposes to a mathematical demonstration of such unconstitutionality.[36] In *Lane* v. *Wilson*, 307 U.S. 268, and *Guinn* v. *United States*, 283 U.S. 347, the Court had before it statutes which were conclusively demonstrated to have no *possible* constitutional application. In the *Guinn* case *no* Negroes were registered voters in Oklahoma prior to the date the "grandfather" clause took effect; therefore, when it exempted *lineal* descendants of qualified voters it, by its inescapable operation, exempted *only* whites. In *Lane* the correction period was so "cabined and confined" as to have the same *obvious* effect. A statute should not be judged unconstitutional as discriminatory unless discrimination *inevitably* results from its application,[37] for *there is not a law that man can conceive that man cannot misapply.*

In appraising *Williams* v. *Mississippi*, 170 U.S. 213, the Court should remember that *it was not a voting case*—it was a case in which the plaintiff complained of being convicted by a jury from which Negroes had been improperly excluded by the process of being required to be qualified electors. Thus, either an invalid qualification law *or* an improper administration would have resulted in the deprivation claimed. The reasoning in that case that either a showing of invalidity or a showing of improper application would have been sufficient, is not appropriate to any contention advanced here.

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36. This present appeal should further be differentiated from *Goillion* because there are many reasons which support each of the statutes here attacked which could be suggested and demonstrated, if the Court wishes.

37. *Cummings* v. *Merchants National Bank*, 101 U.S. 153.

Contrary to the effect of the contentions of the Attorney General the law is well settled that a punitive motive or bad purpose is not to be imputed to a legislature.[38] and even if such a motive or purpose is proven by clear and convincing evidence, the statute is not rendered invalid if, in fact, it can be upheld on other grounds.[39]

The law announced in *Darby* v. *Daniel,* (S.D., Miss.) 187 F. Supp. 170 and the reasoning of the opinion below need no further embellishment.

A glance at the verification of the interrogatories amply demonstrates their apocryphal quality.[40] They are pure hearsay. They were a part of pretrial discovery for a trial that was not conducted. They were not offered in opposition to the motions to dismiss. Those motions were not treated, as they might have been, as a motion for summary judgment. Rule 12 (c), *F.R.Civ.P.* To hold that the answers bolster the complaint when the rules governing the proceeding don't so permit and when neither party made any such request to the trial court, is to make an unwarranted election which changes the record on this appeal, and to deprive appellees of opportunity for rebuttal affidavits.

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38. *Flemming* v. *Nestor,* 363 U.S. 603.

"We observe initially that only the clearest proof could suffice to establish the unconstitutionality of a statute on such a ground. Judicial inquiries into Congressional motives are at best a hazardous matter, and when that inquiry seeks to go behind objective manifestations it becomes a dubious affair indeed. Moreover, the presumption of constitutionality with which this enactment, like any other, comes to us forbids us lightly to choose that reading of the statute's setting which will invalidate it over that which will save it. '[I]t is not on slight implication and vague conjecture that the legislature is to be pronounced to have transcended its powers, and its acts to be considered as void.' Fletcher v. Peck, 6 Cranch 87, 128."

39. *Stephenson* v. *Binford,* 287 U.S. 251.

40. R. 729, 730.

Supposing *arguendo* that these interrogatories and answers had been or could be considered by the Court, they would still not bolster the legal vitality of the complaint. It did not present a case or controversy and the answers could not breathe life into it. The basic concept was false. It was not lack of any quality the answers could supply, but rather a lack of constitutional standing and the lack of a cause of action under § 1971 that caused it to fail.

The court's action in disregarding these answers was immaterial to a proper decision, but in any event, we submit it was not erroneous.

CONCLUSION

No authorization has been extended to the United States to bring or maintain the complaint dismissed below. The judgment of the court below as to the six defendant registrars should be affirmed for lack of venue, for improper joinder and for lack of authority to maintain the suit.

T. F. BADON,
JOE G. GORDON,
Amite County,
JOE T. DRAKE,
Claiborne County,
SEMMES LUCKETT,
LEON PORTER,
CHESTER CURTIS,
Coahoma County,
AUBREY BELL,
HARDY LOTT,
Leflore County,
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November, 1964.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964.

No. 73

UNITED STATES OF AMERICA,
Appellant,

vs.

THE STATE OF MISSISSIPPI ET AL.,
Appellees.

APPEAL BY UNITED STATES FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

MOTION OF APPELLEES TO STRIKE PORTIONS OF BRIEF OF AMICUS CURIAE, AND TO STRIKE APPENDIX THERETO

A.

Appellees move the Court to strike all references to the Mississippi constitutional provisions relating to poll taxes appearing in the instrument entitled, "Brief of the American Civil Liberties Union, *Amicus Curiae*", which said references appear at pages 6 and 7, and in pages 29 through 39 thereof. In support of this motion, Appellees would show:

1.

Neither § 241 nor § 243 of the Mississippi Constitution of 1890, providing for the imposition of a poll tax, relate in any way to registration of electors in the State of Missis-

sippi. The complaint filed in this cause only challenged constitutional and statutory provisions of the State of Mississippi relating to voter registration.

2.

The "Brief" of the "*amicus curiae*" admits:

"The United States in its Complaint does not assert that the Mississippi Poll Tax is invalid."

No question relative to the validity or invalidity of said poll tax was presented to or ruled upon by the three-judge District Court below; therefore, no such ruling could possibly be presented here for review.

3.

The new issue made by the "*amicus curiae*" was not raised in the Jurisdictional Statement or in the Brief for the United States.

4.

The "*amicus curiae*" cannot create a cause of action in this appellate court which is different from or in addition to the case or controversy existing and made by the pleadings between the parties and the actions and rulings of the lower court. This Honorable Court cannot create, "*sua sponte*", a new cause of action not embraced within the case or controversy presented by the parties invoking its appellate jurisdiction.

5.

No official of the State of Mississippi who is a defendant to this action has any duty to execute or enforce the Mississippi statutes related to poll taxes, enacted under the constitutional provisions set forth in paragraph number

one above. The "*amicus curiae*" doesn't even refer to these statutes. The special three-judge District Court below would have lacked statutory jurisdiction to issue any injunction as to these statutes against such defendants, if such issue could have been made before that court.

6.

The "*amicus curiae*" has no standing to assert, in this Honorable Court or in any other court, a new prayer for additional relief of the type which its "Brief" attempts to inject into this cause.

B.

Appellees further move this Honorable Court to strike in its entirety the pamphlet labeled, "Restrictions on Negro Voting in Mississippi History, Appendix to the Brief of the American Civil Liberties Union, *amicus curiae*", as well as all references to said pamphlet contained in the said "Brief". In support of this motion, Appellees would show:

1.

This pamphlet is composed exclusively of incompetent, unauthenticated matter *dehors* the record. No part of such matter was presented to or received by the lower court. Said matter was not subject to cross-examination and on its face can be seen to be composed of second, third and fourth-hand hearsay. Such matter was irrelevant and immaterial to the issues pleaded and would have been inadmissible as evidence for any purpose if it had been duly offered in a court of competent jurisdiction by one having standing as a party to offer or introduce proof in a case or controversy.

2.

The pamphlet constitutes a palpable attempt to influence the decision of this court by reference to matters known to the parties sponsoring it to be outside of the record before this court and outside of the decision of the court below. It is improper to introduce said material into this appeal and especially into the "Brief" of an "*amicus curiae*" by way of such a so-called "Appendix" pamphlet.

3.

When the "Appendix" pamphlet was first lodged for filing with the clerk of this court it was not printed in accordance with the rules of this court. When it was printed and received for filing, the time allowed for the filing of the brief of the party supported had expired as had the time for the filing of such a pamphlet. Appellees have not been asked to agree to any extension of time for such filing, nor have they been notified of any extension therefor granted by the clerk, the Court or any Justice thereof.

Respectfully submitted,

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Amite County,
JOE T. DRAKE,
Claiborne County,
SEMMES LUCKETT,
LEON PORTER,
CHESTER CURTIS,
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BRIEF IN SUPPORT OF MOTIONS

ARGUMENT

I.

The Court Should Strike All References to the New Issue Concerning Poll Tax

The concession, on page 2 of the *"amicus brief"*, that the issue of poll tax validity is beyond the issues drawn in the complaint completely disables its presentation even by a party. It would not have been tried in the lower court; and, even if the lower court had considered this issue, it could not be considered here. *Standard-Vacuum Oil Co.* v. *United States*, 339 U.S. 157. Unless this Court is misled into disregarding the constitutional limitation of its jurisdiction to the consideration of cases or controversies, it must result, *a fortiori*, that such an untried issue cannot be originated at the appellate level by a non-party.

The former opinions of this court unanimously proscribe the tactics attempted here. In *Knetsch* v. *United States*, 364 U.S. 361, 370, the court stated:

> "Some point is made in an amicus curiae brief of the fact that Knetsch in entering into these annuity agreements relied on individual ruling letters issued by the Commissioner to other taxpayers. *This argument has*

never been advanced by petitioners in this case. Accordingly, we have no reason to pass upon it."

To the same effect is the case of *Moffat Tunnel Improvement Dist. et al.* v. *Denver & S. L. Ry. Co.*, 45 F.2d 715, 722 (10 Cir. 1930), wherein the court said:

> "Briefs are received from *amici curiae* to aid the court in disposing of issues *before the court;* friends of the court cannot introduce new issues, nor can they supplant the body to which the legislature has delegated the control of the affairs of the district."

The rules of this Court likewise proscribe the introduction of such new issues, both as to parties [Rule 40(1)(d)(2)] and as to an *amicus curiae* [Rule 42(5)].

Rule 40(1)(d)(2) provides:

> "The phrasing of the questions presented need not be identical with that set forth in the jurisdictional statement or the petition for certiorari, but the brief may not raise additional questions or change the substance of the questions already presented in those documents. Questions not presented according to this paragraph will be disregarded, save as the court, at its option, may notice a plain error not presented."

Rule 42(5) provides:

> "All briefs, motions and responses filed under this rule shall be printed; shall comply with the applicable provisions of Rules 35, 39, and 40 (except that it shall be sufficient to set forth the interest of the *amicus curiae,* the argument, the summary of argument if required by Rule 40(1)(f), and the conclusion); and shall be accompanied by proof of service as required by Rule 33."

Strict adherence to such rules is vital if this court is to have any assurance of getting its appellate work done. Should a party be enabled to present new issues not ruled on by the lower courts, or have an *amicus* present them for it, the burdens on this court would surely increase manyfold, for what lawyer ever completed the trial of a case without wishing he had made some different claim or raised just one more issue? Obviously, any course of reasoning that would permit him to bring one new issue here on appeal would let him bring up any number of such untried issues of which he could conceive. If a party should not be directly allowed to suggest new and different matters for the first time on appeal, then no "*amicus*", playing Boswell to a party's Johnson should be permitted to do it for him.

The case at bar is not at all similar to the situation present in *Mapp* v. *Ohio*, 367 U.S. 643. There the *amicus* brief suggested in a short concluding paragraph that the court adopt an *alternative* course of disposing of *the* issue presented to and tried by the lower court and which was directly before this court on the appeal, which issue was whether the defendant's conviction was or was not constitutional. The alternative course suggested by the *amicus* was to reverse the conviction by the process of overruling a case cited and relied on by the State to support the admission of illegally obtained evidence (*Wolf* v. *Colorado*), rather than by construing the State criminal statute under which defendant was convicted. No new, untried issue was thus presented. The *amicus* only suggested that the issue of guilt or innocence already presented be determined by an alternative process of attacking a basis for conviction relied upon by appellee but not suggested by the appellant.

In contradistinction, this "Brief" presents a *new* issue not tried below, not in the record, not in the complaint and not mentioned in the Jurisdictional Statement nor in the brief of either party. It is not even in the same area of statutory and constitutional provisos as those attacked by the complaint. The complaint only drew into controversy such provisions as related to qualifications for registration. The poll tax has nothing to do with and has no effect on registration. A person may become registered and remain registered for the remainder of his life without the payment of a single poll tax. *Bew* v. *State*, 71 Miss. 1, 13 So. 868; *Dixon* v. *State*, 74 Miss. 271, 20 So. 839. The payment of that tax is a prerequisite to *voting* in certain State elections but the complaint made no issue, and the lower court made no decision, outside of the field of *registration* prerequisites.

The "Brief" of the *"amicus curiae"* is wholly in error when it alludes (on page 37) to action "by voting registrars in administering the (poll) tax." This tax is administered and collected by the Sheriff who is also the Tax Collector, and by the various election managers at each polling place who determine whether or not this tax has been paid by requiring presentation of poll tax receipts or exemption certificates at the time a person who is registered on the poll books presents himself and offers to vote. The Registrar has no connection with the assessment collection or ascertainment of payment of poll taxes by registered electors. His only function even partly related to such tax is that he is required by law to issue duplicate receipts in the event of loss and that he issue exemption certificates to military personnel and older citizens. (See *Mississippi Code* 1942, § 3161, §§ 3163 through 3163-06, and § 3235.)

Even though the merits of this issue are not before the court, we feel compelled to observe that the *ipse dixit* assertion on page 30 by the *"amicus curiae"* that the 24th Amendment does not furnish apodictic proof that a poll tax is a completely constitutional qualification on the exercise of the franchise in non-federal elections, is as ridiculous as it is unsupported. Why would the Congress and the people make the vain and useless gesture of adding to the Constitution a solemn amendment partially proscribing a qualification that was already wholly impermissible under some other proviso? Certainly the *"amicus"* should have brought some light to bear on this anomaly if it had the slightest hope it would be accepted.

The suggestion of the *"amicus"* that it be allowed to expand the litigation beyond the appeal as taken is contrary to the constitutional limitations on this court's jurisdiction, to precedent and to common sense.

The first reported appellate case reviewed by this court was *Glass, et al.* v. *The Sloop, Betsey, et al.*, 3 U.S. (3 Dall.) 6. It came up at the fourth term (February, 1794). Since that first case this court has adhered to the practice of limiting the exercise of its review jurisdiction to what has been decided by a lower court. The governing principle was first articulated by Mr. Chief Justice Marshall, as follows:

> "It is an essential criterion of appellate review jurisdiction that it reviews and corrects proceedings in a cause already instituted, and does not create that cause." *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 175.

In *The Schooner Alicia* v. *The United States*, 74 U.S. (7 Wall.) 571, 573, the court spoke thus:

> "An appellate jurisdiction necessarily implies some judicial determination, some judgment, decree or order of an inferior tribunal, from which an appeal has been taken."

Issues not contained in the complaint, questions not presented to trial court, and matters not covered by the record have never been considered by the Supreme Court. This rule was clearly announced in a land title suit decided at the 1833 Term, *Holmes et al.* v. *Trout et al.*, 32 U.S. (7 Pet.) 171, 210, where the court's expression was:

> "No evidence can be looked into in this court, which exercises an appellate jurisdiction, that was not before the Circuit Court; and the evidence certified with the record must be considered here as the only evidence before the court below. If, in certifying the record, a part of the evidence in the case had been omitted, it might be certified in obedience to a certiorari; but in such case it must appear from the record that the evidence was used or offered to the Circuit Court."

In *Mitchel et al.* v. *United States*, 34 U.S. (9 Pet.) 711, 731, the court stated the rule and reasons thus:

> "There is, however, one subject which was considered by him, into which we do not feel at liberty to inquire, which is the watermark in the paper on which the governor's permission of the 7th of January, 1804, was written, noticed and commented on at large by the judge. Record 706. This objection was not made in the court below at the hearing, or in the argument, so that no opportunity was afforded to the petitioner to produce any evidence on the subject, or to his counsel to answer the objection. This court also refused to grant him a commission to take testimony to explain and account for the water-mark, or permit him to read the ex-parte evidence offered to explain it; because in an appellate court no new evidence could

> be taken or received without violating the best established rules of evidence and law. Under such circumstances, it would be dealing to the petitioner a measure of justice incompatible with every principle of equity, to visit upon his title an objection which he was not bound to anticipate in the court below, which he could not meet there, and which this court were compelled to refuse him the means of removing by evidence."

This was followed in *Boone* v. *Chiles*, 35 U.S. (10 Pet.) 177, 208, with this statement:

> "The deed from Newland and wife to Green Clay was not referred to in the pleadings made an exhibit in the cause, or, so far as appears used in the Circuit Court, it was no part of the record before us at the argument of this cause at the last term, and no suggestion of diminution was then made. At the May sessions of the Circuit Court, on a suggestion of the defendant that this deed was on file and had been used at the hearing, the court ordered it to be certified to this court; and the counsel for plaintiffs having agreed to consider it as returned on a certiorari, it has been read, and we have taken it into our consideration as an exhibit in the cause. In doing this, however, we must be distinctly understood as clearly of opinion that it is not admissible by the rules of appellate courts, who can act on no evidence which was not before the court below, or receive any paper that was not used at the hearing."

A number of other cases have been equally as emphatic, *e.g.*, *Davis* v. *Packard*, 31 U.S. (6 Pet.) 41; *Hudgins* v. *Kemp*, 59 U.S. (18 How.) 530, 534; *National Bank of the Metropolis* v. *Kennedy*, 84 U.S. 19, 29; *Kerr* v. *Clampitt*, 95 U.S. 188; *Bechtel* v. *U. S.*, 101 U.S. 597; *Hecht* v. *Boughton*, 105 U.S. 235; *Southern Pine Lumber Co.* v. *Ward*, 208 U.S. 126; *Alabama Public Service Commission* v. *Southern Railway Co.*, 341 U.S. 341, 347; *Pennsylvania Railroad Co.* v. *Public*

Utilities Commission of Ohio, 298 U.S. 170, 177. Not even newly discovered evidence may be considered, *dehors* the record, in an appellate proceeding. In *Russell* v. *Southard et al.*, 53 U.S. (12 How.) 139, 158, the court refused to consider affidavits with this language:

> "The decree of the Circuit Court, in this case was reversed during the present term, and a decree entered in favor of the appellant. A motion is now made in behalf of Daniel R. Southard, one of the appellees, to set aside the decree in this court, and to remand the case to the Circuit Court for further preparation and proof, upon the ground that new and material evidence has been discovered since the case was heard and decided in that court. In support of this motion affidavits have been filed stating the evidence newly discovered, and that it was unknown to him when the case was heard in the court below.
>
> "It is very clear that affidavits of newly discovered testimony cannot be received for such a purpose. This court must affirm or reverse upon the case as it appears in the record. We cannot look out of it for testimony to influence the judgment of this court sitting as an appellate tribunal. And according to the practice of the Court of Chancery from its earliest history to the present time, no paper not before the court below can be read on the hearing of an appeal."

England v. *Gebhardt*, 112 U.S. 502, and *McClellan et al.* v. *Carland, Judge*, 217 U.S. 268, are to the same effect concerning affidavits. In *Yazoo and Mississippi Valley Railroad Company et al.* v. *Adams*, 180 U.S. 41, the court refused to allow a question outside the record, as to constitutionality of a statute of Mississippi, to be drawn into the questions it considered on a certiorari review, even though the Chief Justice of the State Supreme Court certified that the validity of the statute had been presented in

argument to that court. A transcript of a hearing in another proceeding was refused consideration in *Lawn* v. *United States*, 355 U.S. 339, 354.

A case analogous to the procedural circumstances in the case at bar is found in *United States* v. *Hosmer*, 76 U.S. (9 Wall.) 432, where the appeal was from a record made on petition and demurrer before the Court of Claims. The court said:

> "The facts set forth in the petition were admitted by the demurrer. The only question before the court was the sufficiency of the facts alleged to warrant the judgment invoked. The case is presented for our consideration in the same manner. We cannot take cognizance of any fact beyond the scope of the record, as it was made up in the court below."

The same situation was involved in *Memphis & St. Louis Railroad Company* v. *Loftin*, 105 U.S. (15 Otto) 258. This holding was set out in this manner:

> "In the elaborate printed argument presented for the appellant, reference is made to facts not stated in the complaint. These we cannot consider. As the case was submitted on demurrer, only the averments in the complaint are before us. While we may take judicial notice of the several statutes of the State which are relied on, the complaint alone must be looked to for information as to the manner in which the lands were acquired and the purposes for which they are held."

It is not sufficient to give this court jurisdiction to try a new issue to show that an issue *might* have arisen in the court below unless (1) the record shows it did arise *and* (2) was applied to the case by the court below. *Crowell* v. *Randell*, 35 U.S. (10 Pet.) 368; *cf. Hunter Co.* v. *McHugh*, 320 U.S. 222.

The court cannot resort to the theory of judicial notice to extend a record which does not reflect that a particular issue was tried by or presented to the trial court. In *Powell* v. *Brunswick County Supervisors*, 150 U.S. 433, 440, this court long ago established the proper rule in this language:

> "If it appear from the record by clear and necessary intendment that the Federal question must have been directly involved so that the state court could not have given judgment without deciding it, that will be sufficient; but resort cannot be had to the expedient of importing into the record the legislation of the state as judicially known to its courts, and holding the validity of such legislation to have been drawn in question, and a decision necessarily rendered thereon, in arriving at conclusions upon the matters actually presented and considered."

See also *Mountain View Mining and Milling Co.* v. *McFadden et al.*, 180 U.S. 533; *Arkansas* v. *Kansas & Texas Coal Co. et al.*, 183 U.S. 185; and *Mutual Life Insurance Company of New York* v. *McGrew*, 188 U.S. 291.

This rule is particularly to be enforced when, as here, the new issues attempted to be injected for the first time at the appellate level are constitutional issues. *Rescue Army et al.* v. *Municipal Court of the City of Los Angeles*, 331 U.S. 549, 568; *Local No. 8-6, Oil, Chemical & Atomic Workers Intl. Union et al.* v. *Missouri*, 361 U.S. 363.

In *United States* v. *Petrillo*, 332 U.S. 1, 5, the court stated:

> "Two general principles which concern our disposition of appeals involving constitutional questions have special application to this case: We have consistently refrained from passing on the constitutionality of a statute until a case involving it has reached a stage

where the decision of a precise constitutional issue is a necessity. The reasons underlying this principle and illustrations of the strictness with which it has been applied appear in the opinion of the Court in the Rescue Army v. Municipal Court, 67 S. Ct. 130, (1409) and cases there collected. And in reviewing a direct appeal from a District Court under the Criminal Appeals Act, supra, our review is limited to the validity or construction of the contested statute. For 'The Government's appeal does not open the whole case.' United States v. Borden Co., 308 U.S. 188, 193, 60 S. Ct. 182, 186, 84 L. Ed. 181."

In *United States* v. *Spector*, 343 U.S. 169, 172, the Court observed:

"But when a single, naked question of constitutionality is presented, we do not search for new and different constitutional questions. Rather we refrain from passing on the constitutionality of a phase of a statute until a stage has been reached where the decision of the precise constitutional issue is necessary."

In fact, the Court will not even allow both parties to an appeal to agree upon a new issue for this court's review. In *Kearney* v. *Case*, 79 U.S. (12 Wall.) 275, it was held:

"This case was tried by the court without a jury, and the defendant, against whom a judgment was recovered, brings it here by writ of error.

"No question arises on the process or pleadings; there is no bill of exception, and the plaintiff in error relies on what purports to be a statement of facts in the case to show the error of which he complains. That statement does not profess to be facts found by the judge.

"It says: 'We agree that the foregoing shall be the statement of facts for the writ of error returnable to the Supreme Court of the United States.' It is

signed by defendant in error and by the counsel for plaintiff. The writ of error had been sued out nine months before this paper was signed and filed with the clerk.

"It needs no argument to show that this court cannot look into such a paper as part of the record, nor make it the foundation of revising the judgment, though both parties consent to it. The case here must be tried on the rulings of the court below on what was before it, and this must appear by the record; and if the facts are to be considered they must appear by bill of exceptions, or by an agreed statement submitted to the court for its judgment, or by the finding of the court under the statute. It cannot be permitted that the parties, by consent, make up a case for this court after it has passed from the control of the court below. The case of *Insurance Co.* v. *Tweed*, 7 Wall. 44, 19 L. Ed. 65, is not a parallel case. There the statement, such as it was, was made by the judge, and on it he founded his judgment. It was made and filed at the time the judgment was rendered; and although defective in many respects, there was sufficient in it to present the legal propositions, if the confused character of the paper was waived. This the counsel here desired to do, and the court permitted. We are all of opinion, therefore, that the paper called a statement of facts must be disregarded."

See also *Metropolitan Railroad Co.* v. *MacFarland et al.*, 195 U.S. 322 and *cf. Barr* v. *Matteo et al.*, 355 U.S. 171.

The Court has also reasoned that it would be improper for it to intimate an opinion on an issue not arising on the face of the record, which issue might occur in some other trial. *Mutual Life Insurance Company of New York* v. *Snyder*, 93 U.S. 393.

The lack of standing to have brought an action seeking the new relief is a fatal defect to the grant of any such new

relief as requested at the behest of the incorporated "*amicus curiae*". In *Fletcher* v. *Peck*, 10 U.S. (6 Cranch) 87, 130, the court said:

> "This is not a bill brought by the state of Georgia, to annul the contract, nor does it appear to the court, by this count, that the state of Georgia is dissatisfied with the sale that has been made. The case, as made out in the pleadings, is simply this: One individual who holds lands in the state of Georgia, under a deed covenanting that the title of Georgia was in the grantor, brings an action of covenant upon this deed, and assigns, as a breach, that some of the members of the legislature were induced to vote in favor of the law, which constituted the contract, by being promised an interest in it, and that therefore the act is a mere nullity.
>
> "This solemn question cannot be brought thus collaterally and incidentally before the court. It would be indecent in the extreme, upon a private contract between two individuals, to enter into an inquiry respecting the corruption of the sovereign power of a state. If the title be plainly deduced from a legislative act, which the legislature might constitutionally pass, if the act be clothed with all the requisite forms of a law, a court, sitting as a court of law, cannot sustain a suit brought by one individual against another founded on the allegation that the act is a nullity, in consequence of the impure motives which influenced certain members of the legislature which passed the law."

This same "*amicus*" has been adjudicated to have no such standing as would have supported any independent claim by it for relief which is based upon individual rights of natural persons. In *Hague* v. *C.I.O.*, 307 U.S. 496, the court in its opinions stated:

> "Natural persons, and they alone, are entitled to the privileges and immunities which Section 1 of the Fourteenth Amendment secures for 'citizens of the United

States.' Only the individual respondents may, therefore, maintain this suit." (p. 514)

"As to the American Civil Liberties Union, which is a corporation, it cannot be said to be deprived of the civil rights of freedom of speech and of assembly, for the liberty guaranteed by the due process clause is the liberty of natural, not artificial, persons. Northwestern Nat. Life Insurance Co. v. Riggs, 203 U.S. 243, 255, 27 S. Ct. 126, 129, 51 L. Ed. 168, 7 Ann. Cas. 1104; Western Turf Ass'n v. Greenberg, 204 U.S. 359, 363, 27 S. Ct. 384, 385, 51 L. Ed. 520." (p. 527)

We trust the Court will not be offended if we make the further obvious comment that this *corporation "amicus"* could not become a qualified voter under the franchise laws of Mississippi or any other state. It certainly cannot claim to enjoy any such statutory status to assert the rights of individuals as 28 *U.S.C.* 1971 conferred upon the United States. The lack of any statement of interest in the Brief or Motion of the *"amicus"* is significant in this regard. The Justices of this Court may have private personal knowledge of some interest which this corporation might have set out, but Rule 42(3) of this Court requires that the *nature* of the interest be *concisely stated*, and this was not done. As to the new issue attempted to be presented, a compliance with this reasonable rule was especially vital. Such compliance ought not be disregarded.

II.

The Court Should Strike the Appendix Pamphlet Filed by the "Amicus"

It is difficult to know just where to begin to point out the errors in a document so unique and so fallacious as the appendix pamphlet. We find nothing similar to it mentioned in the published records of this court since 1834. In

that year, Mr. Chief Justice Marshall treated with a similar pamphlet in a preliminary opinion in the case of *Mitchell* v. *United States*, 34 U.S. 307 (The principal opinion is reported under the style of *Mitchel* v. *United States*, 34 U.S. 711). The entire preliminary opinion is set out as follows:

> "A pamphlet has been sent to the judges touching the questions in controversy in this cause. The court desire it to be understood that the practice of the court is not to receive or examine such papers, unless they have been *presented in court* and shown to the opposite counsel.
>
> "It was afterwards, on the same day, stated to the court by Mr. White, of Florida, counsel for the appellant, that the counsel on neither side had any knowledge of the pamphlet's having been sent to the court, nor did they in any manner countenance the same. The pamphlet was sent to the judges by an agent of the appellant, who was not in any manner aware of the irregularity of the proceeding."

We have heard of a practice in which parties wishing to influence a favorable judicial decision attempt to "plant" appropriate articles in law journals or other publications which might reach the eyes of a judge before such a decision is to be made. However we did not know of any practice whereby extra judicial writings were supplied to the court as appendices.

The present pamphlet makes no reference whatsoever in its text to any part of the record in the pending cause. It is completely hearsay, and is not within any recognized exception to that salutary rule. Neither the student who wrote it nor the self-described, non-expert who lent his "authentication" to it, were—with respect to its contents—subject to the sanction of an oath, to a search for their motives, to a test of their accuracy or veracity. They were

without responsibility for errors of omission or falsification.

In *Donnelly* v. *United States*, 228 U.S. 243, this Court ably defined most of the bases in reason on which hearsay evidence was excluded by courts. In that case the court stated:

> "Hearsay evidence, with a few well-recognized exceptions, is excluded by courts that adhere to the principles of the common law. The chief grounds of its exclusion are, that the reported declaration (if in fact made) is made without the sanction of an oath, with no responsibility on the part of the declarant for error or falsification, without opportunity for the court, jury, or parties to observe the demeanor and temperament of the witness, and to search his motives and test his accuracy and veracity by cross examination, *these being most important safeguards of the truth* where a witness testifies in person, and as of his own knowledge; and, moreover, he who swears in court to the extrajudicial declaration does so (especially where the alleged declarant is dead) free from the embarrassment of present contradiction, and with little or no danger of successful prosecution for perjury. It is commonly recognized that this double relaxation of the ordinary safeguards must very greatly multiply the probabilities of error, and that hearsay evidence is an unsafe reliance in a court of justice."

In *Bridges* v. *Wixon*, 326 U.S. 135, 153, the court refused to admit a hearsay statement as substantive evidence, pointing out:

> "So to hold would allow men to be convicted on unsworn testimony of witnesses—*a practice which runs counter to the notions of fairness on which our legal system is founded*."

Much of the pamphlet purports to be a rescript of opinions of others taken from publications, books and newspaper

editorials, and of newspaper reports in which the reporter purports to quote from opinions of third persons. With a sufficiently lurid cover this tract might be acceptable on some news-stands; however, it would have been totally unacceptable if counsel for any party had tendered it in the court below. It certainly should not be taken as the equivalent of a part of the record on this appeal.

It is with deference to the eminent former Attorney General of the United States and his associates, who sponsored the filing of this pamphlet, that we submit that it falls squarely within the following ruling announced by Mr. Justice Harlan in *Schley* v. *Pullman's Palace Car Co.*, 120 U.S. 575:

> "Before entering upon the consideration of the case it is proper to notice the motion made in behalf of the plaintiff in error, to strike out certain parts of the printed argument filed by the counsel for the defendant in error. Notwithstanding the agreement that the case should be heard in the court below upon the single question referred to in the stipulation, the counsel for the defendant in error states many things which he declares to be "incontrovertible facts," and within the knowledge of opposing counsel, but which are wholly unsustained by anything in the record. The motion to strike out relates to those matters. The excuse given for this breach of professional propriety is "the extreme brevity of the record." But it is the same record upon which counsel for the company succeeded for his client, and which, by agreement, contained all that was to be submitted to the court. The excuse given furnishes no apology whatever for his violation of the terms of the stipulation. Much less does it palliate his attempt to influence the decision

here by reference to matters not in the record, and which he must have known could not be taken into consideration. It is only necessary to say that the facts *dehors* the record, which have been improperly introduced into the brief of the counsel for the defendant in error, have not in any degree influenced our determination of the case."

In addition to its substantive defects, the appendix pamphlet failed to comply with the rules of this court relating to printing and filing.

When the appendix was first lodged with the office of the clerk it was not printed in accordance with the requirements of Rule 39. When it was lodged with the clerk in printed form, the time specified for its filing, under Rule 42(2), had expired, in that the time allowed for the filing of the brief of the party supported had expired. Appellees have received no request for any extension of time within which to file this pamphlet. They, therefore, have not agreed to any such extension of time. The office of the clerk has not notified appellees that any such extension has been granted by the clerk, by the court, or by any Justice thereof [Rule 34(5)].

CONCLUSION

The motions of Appellees to strike portions of the brief and the entire appendix filed by the *amicus curiae* should be sustained.

Respectfully submitted,

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